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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 99.

E. L. ALLEN AND WALLACE B. ALLEN, ADMINISTRATOR OF THE ESTATE OF ERASMUS W. ALLEN, DECEASED, PLAINTIFFS IN ERROR,

vs.

FRANCES J. RILEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED AUGUST 14, 1905.

(19,875.)

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In the Supreme Court of the State of Kansas.

Be it remembered, that on the 11th day of February 1904, there filed in the office of the clerk of the Supreme Court of the state of nsas, a petition in error and case made from the district court of wn county, together with a waiver of issuance and service of sum-ns in error and entry of the appearance of the defendant in error, ch petition in error, case made, waiver and entry are in the words figures as follows, to wit:—

13922.

In the Supreme Court of the State of Kansas.

L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased, Plaintiffs in Error,
vs.
FRANCIS J. RILEY, Defendant in Error.

Petition in Error.

Filed Feb. 11, 1904. D. A. Valentine, Clerk Supreme Court.

The said E. L. Allen and Wallace B. Allen, Administrator of the ate of Erasmus W. Allen, deceased, Plaintiffs in error, complain of said Francis J. Riley, defendant in error, for that said defendant error, Francis J. Riley, at the February term, 1903, of the District urt of Brown County, Kansas, to-wit, on the 13th day of February, 03, in an action then pending in said court, wherein said Francis Riley, defendant in error, was plaintiff, and Erasmus W. Allen d E. L. Allen, were defendants, by the consideration of the court overed judgment against the said Erasmus W. Allen and E. L. len, defendants below for the sum of twelve hundred and fifty-1,250) Dollars and the costs of said action, a certified and original e made, duly attested and filed in said court is hereto attached, rked "Exhibit A," and made a part of this petition in error. And said Erasmus W. Allen having deceased in Brown County, Kan-, the said judgment, and said action, was by said District Court ly revived in the name of Wallace B. Allen, the duly appointed d qualified administrator of the estate of said Erasmus W. Allen, eased. (157).

And the plaintiffs in error further allege that there is material or in said record, and in said proceedings of the District Court, ecting the substantial rights of plaintiffs in error in this, to wit:

First. The court erred in overruling the defendants' motion in rt to make plaintiff's petition more specific and certain (10).

Second. The court erred in overruling the demurrer of defendants the first count of plaintiff's petition, to which defendants objected d excepted. (20-23-24).

5 Third. The court erred in holding that the District Court had jurisdiction of this case, and in refusing to certify the same to the United States Circuit Court sitting within and for the State of Kansas, to which defendants objected and excepted (40-42).

Fourth. The court erred in overruling defendants' motion to change the venue of and certify said case to the United States Court as asked in said motion (40-42).

Fifth. The court erred in sustaining the demurrer of plaintiff to the first count of defendants' answer, to which defendants below objected and excepted (36-42).

Sixth. The court erred in the admission of incompetent evidence offered by the plaintiff, and objected and excepted to by defendants (46-82).

Seventh. The court erred in excluding proper and competent cross-examination of plaintiff's witnesses on the part of defendants, to which they objected and excepted (46-82).

Eighth. The court below erred in excluding competent, relevant and material evidence offered by defendants below, to which they objected and excepted. (82-125).

Ninth. The court erred in permitting improper and incompetent cross-examination by plaintiff of defendants' witnesses, to which defendants objected and excepted (82-125).

Tenth. The court erred in permitting the pretended assignment by F. J. Riley on the back of deed of territory on page 5, to be made during the trial of said action in the court below, and to be offered in evidence (5 and —), to which defendants below objected and excepted.

Eleventh. The court erred in refusing to instruct the jury in writing, and to give to the jury as the law of the case instructions 1 to 12 inclusive, on record pages 131-134, inclusive, asked and submitted in writing by defendants below, and to the refusal of which, and each of which, defendants excepted.

Twelfth. The court erred in its instructions given to the
6 jury as the law of said case, to the giving of which, and each of which, defendants objected and excepted.

Thirteenth. The court erred in not instructing the jury peremptorily to find a verdict in favor of defendants below, to which defendants excepted.

Fourteenth. The court erred in overruling defendants' motion for a new trial, to which they objected and excepted (149-155).

Fifteenth. The court below erred in not granting defendants a new trial, to which they objected and excepted.

Sixteenth. The court below erred in rendering judgment against defendant- below for the costs of said action, to which they excepted (155).

Seventeenth. The court erred in rendering judgment in said case in favor of said plaintiff and against said defendants below in the sum of $1250, with interest at six per cent. per annum from date thereof, or for any part thereof, to which defendants below objected and excepted.

Eighteenth. The court erred in overruling the motion of defend-

nts below to retax the costs of said case, to which they objected and xcepted (152-155).

Nineteenth. The court erred in not rendering judgment in favor f defendants on the law and the evidence in said case.

Twentieth. Said judgment is contrary to the law of the case.

Twenty-first. The court erred in not deciding, and in not instruct- ng the jury, that the statute set out and referred to in plaintiff's mended petition were unconstitutional, and in contravention of the onstitution of the United States and of the federal laws.

Wherefore plaintiffs in error pray that the judgment of the court elow be set aside and reversed, and that judgment be ordered in avor of plaintiffs in error, and that said plaintiffs in error be restored o all things which they have lost by reason of the rendition of said udgment in the court below.

C. W. REEDER,
S. F. NEWLON &
RYAN AND RYAN,
Attorneys for Plaintiffs in Error.

13922.

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Case-Made.

Filed Feb. 11, 1904. D. A. Valentine, Clerk Supreme Court.

Be it Remembered, that on the 17th. day of March, 1902, in the bove entitled court, the above named plaintiff filed her petition and aused a summons to be issued thereon, which petition is in words nd figures as follows:—

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Petition.

Comes now the said plaintiff and for her cause of action against he said defendants, Erasmus W. Allen and E. L. Allen, alleges: and vers:

1: That on the — day of January, 1901, plaintiff was a resident f Coffey County, in the State of Kansas, and on or about said day in aid County, the said defendants offered and agreed to barter and ell to the plaintiff a certain patent right for a Washing-machine

alleged to have been granted by the United States to the said Erasmus W. Allen and offered to sell to the said plaintiff the said patent right for the territory of the State of Kentucky, for the sum of $5000.00; and that on the 30th day of January, 1901, in the said Coffey County, Kansas, the said Erasmus W. Allen by the said E. L. Allen purporting to act as his agent, executed and delivered to the plaintiff under the name of F. J. Riley his certain agreement in writing: whereby he purported to convey to the plaintiff the said patent right for the territory of the State of Kentucky; for the said sum of $5000.00.

A copy of said agreement is hereto attached and made a part hereof and marked Exhibit "A."

That in consideration of the sale and conveyance of the said patent right, as aforesaid, and the payment of the sum of $100.00 the plaintiff, together with her husband, D. W. Riley, agreed to convey and did convey to the said defendant E. L. Allen, eighty acres of land situated in Coffey County, in the State of Kansas, to-wit:—The North half of the South East Quarter of section thirty five (35) in Township twenty two (22) of Range sixteen (16) *that said* land was the property of plaintiff and stood upon the records in said County in her name and was conveyed to the said E. L. Allen at the request of the said defendants and was of the reasonable and actual market value of $1500.00. That the said defendants entered into the possession of said lands and immediately thereafter sold and conveyed the same and have now no interest in or control thereof.

Plaintiff further alleges (that the conveyance and sale of the said patent right by defendants for the said territory was in violation of law and was and is illegal and void, which fact was well known to the defendants but unknown to the plaintiff) that the said defendant had not filed with the Clerk of the District Court of said Coffey County or elsewhere in the State of Kansas a copy of the letters patent duly authenticated, for such alleged invention and did not swear or affirm before such Clerk to an affidavit that such letters patent were genuine, and had not been revoked or annulled, or that they or either of them had full authority to sell or barter such patent right, and did not set forth in an affidavit the name, age, occupation and residence of said defendants or either of them, and did not file a copy of such affidavit with the said Clerk of the District Court of said Coffey County, and had not in any manner complied with or attempted to comply with the laws of the State of Kansas in relation to the sale or the offering for sale of a patent right in said State.

9

2: Plaintiff further alleges that relying upon the validity of said sale and of her right to manufacture and sell the said invention in the State of Kentucky, she moved with her family from the State of Kansas to the State of Kentucky and attempted to engage in the manufacture and sale of such invention. That the patent right for the territory so sold was worthless, and of no value; that plaintiff and her husband expended four months' time on such work which was a total loss and to her damage in the sum of 200.00 that she paid for transportation for herself and family the sum of $125.00, that she ex-

pended in the manufacturing of such *invention* the sum of $62.50 which was a total loss to her and to her damage in the said sum. That she expended for board and her family living while in Kentucky the sum of $200.00; that she expended for car fare and traveling expenses in attempting to sell such invention in the State of Kentucky the sum of $50.00 to her total damage — sum of $637.50.

3: Plaintiff further alleges that she has offered to surrender to the defendants the conveyance of the said alleged patent right and to release to them whatever right, if any, may have passed by said alleged conveyance, and comes now into Court and makes offer to surrender and release to the said defendant all right or semblance of right she may have in said patent right, by reason of the said conveyance; that she has demanded of the defendant- the value of the land so conveyed to them and the payment of the damages as hereinbefore specified and that the defendants have refused and neglected and still refuse and neglect to pay said amount or any part thereof.

Wherefore plaintiff prays judgment against the defendant for the sum of $1400 the value of the said lands, so conveyed as hereinbefore alleged less the sum of 100.00 and the further sum of $637.50 as her damages as hereinbefore specified and for costs of this action.

W. F. SHALE AND
W. F. MEANS,
Att'ys for Plaintiff.

Filed March 17, 1902.
W. E. ARCHER,
Clerk of the District Court.

EXHIBIT "A."

The Dewey Washing Machine.

Assignment of Territory.

Whereas, Erasmus W. Allen, of Hiawatha, County of Brown and State of Kansas, did obtain Letters-Patent of the United States for improvement in Washing Machines, which Letters-Patent are numbered 605,987, and dated the 21st day of June, 1898.

Whereas, I the undersigned am now the sole owner of all rights under said [illegible]ts in the below recited territory, and

Whereas, F. J. Riley of Le Roy, County of Coffey, and State of Kansas, is desirous of acquiring an interest in the same;

Now, therefore, this Indenture, Witnesseth, that for and in consideration of the sum of Five Thousand dollars to me in hand paid, the receipt of which is hereby acknowledged, I have sold and assigned, and by these presents do sell and assign, to the said F. J. Riley, all the right, title and interest which I have in and to the said invention for, to and in the State of Kentucky, and for, to and in no other place or places; the same to be held and enjoyed by the said F. J. Riley and her legal representatives, to the full end of the term for which said Letters-Patent are granted, as fully and entirely as the

same would have been held and enjoyed by me had this assignment and sale not been made.

11 In testimony whereof, I have hereunto set my hand and affixed by seal this 30th day of January A. D. 1901.

ERASMUS W. ALLEN, [SEAL.]
By E. L. ALLEN, *Att'y in Fact.*

In the presence of two witnesses:

____ ____.

____ ____.

No legalization required.

I, F. J. Riley, the grantee named in the within instrument of writing hereby renounce, remise and release to the within named Erasmus W. Allen, *and* all interest, rights and title granted to me under and by virtue of the said within instrument of writing.

F. J. RILEY.

Thereafter, on the 15th day of April 1902, by consent of parties, the said defendants filed in said court, the certain motion to require plaintiff to make her said petition more specific and certain which said motion is in words and figures as follows:

12 In the District Court, Sitting Within and for Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Motion to Make Definite, Specific and Certain.

Comes now the above named defendants and moves the Court to require plaintiff to make *his* petition, filed herein, more definite, specific and certain in the following parts, to-wit:

First: By setting out and making each Count or cause of action complete within itself and as a whole.

Second: On page two and after, plaintiff in line thirteen, set out and state fully on what grounds or for what reasons or the facts on which it is claimed that said patent was and is illegal and void and if on more than one ground, set out and state the same fully.

Third: At the close of said count or cause of action insert or set out, whether plaintiff has offered to reconvey said patent and has turned back and offered to pay the full consideration entered into in transfer-ing of said patent to plaintiff.

Fourth: At the first of Count two or second cause of action, set out fully and distinctly the contract and transaction by which said patent right was purchased or refer to it as set out in the first cause of action and make the same a part of said second cause or count of action.

Fifth: In said second Count or cause of action, pretended to be
et out in said petition, allege whether said patent was in fact con-
eyed to plaintiff and also what if anything prevented plaintiff from
aking sale of said patent right or from making and selling said
atent articles in the State of Kentucky.

Sixth: In said second count or cause of action, set out and give
emized statement of the items which plaintiff seeks to recover,
iving date and amount of each.

RYAN & REEDER AND
SAMPLE F. NEWLON,
Att'ys for Defendants.

Consent to file April 15, 1902.
W. F. MEANS AND
W. F. SHALE,
Attorneys for Plaintiff.

Filed April 15, 1902.
W. E. ARCHER,
Clerk of the District Court.

3 Thereafter, at the following term of said court, and on the 7th day of May, 1902, the said motion came on to be heard nd was overruled in part to which defendants objected and excepted t the time. The said order of said court in regard thereto and the ournal Entry thereof is in words and figures as follows:

n the District Court, Sitting Within and for Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

And now on the 7th day of May, 1902, at the regular May 1902 erm of said Court came on to be heard the above entitled action on ne motion of defendants to make plaintiff's petition more definite nd certain as stated in the said motion on file; Plaintiff present by er attorneys W. F. Shale and W. F. Means; defendants present by neir attorneys, Sample F. Newlon and Ryan & Reeder; and after rgument of Counsel, said motion is, on due consideration sustained part and overruled in part as follows:

It is ordered and adjudged that said motion be sustained as to the rst, second, fourth and sixth paragraphs thereof, and as to all other atters, it is ordered and adjudged that the same be overruled; efendants excepting to the ruling of the Court in sustaining said otion, only in part and plaintiff excepting as to the sustaining of id motion in the parts sustained by the Court, and thereupon plain-ff asked and was given five (5) days in which to prepare and file an nended petition herein setting out and numbering its different auses of action and so as to comply with the order of Court in other

respects; defendants given ten (10) days thereafter in which to plead.

W. I. STUART,
Judge of the District Court.

O. K.
RYAN & REEDER.
W. F. MEANS.

Thereafter, on the 12th day of May, 1902, by leave of court, the said plaintiff filed therein her amended petition which is in words and figures as follows:

14 In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Amended Petition.

Comes now the said plaintiff and for her cause of action against the said defendants, Erasmus W. Allen and E. L. Allen alleges and avers:

1. That on the — day of January 1901, plaintiff was a resident of Coffey County, in the State of Kansas, and on or about said day in said County, the said defendant offered and agreed to barter and sell to the plaintiff a certain patent right for a washing machine alleged to have been granted by the United States to the said Erasmus W. Allen and offered to sell to the said plaintiff the said patent right for the territory of the State of Kentucky for the sum of $5000; and that on the 30th day of January 1901, in the said Coffey County, Kansas, the said Erasmus W. Allen by the said E. L. Allen, purporting to act as his agent, executed and delivered to the plaintiff under the name of F. J. Riley his certain agreement in writing, whereby he purported to convey to the plaintiff the said patent right for the territory of the State of Kentucky for the said sum of $5000.

A copy of said agreement is hereto attached and made a part hereof and marked Exhibit "A."

That in consideration of the sale and conveyance of said patent right, as aforesaid, and the payment of the sum of $100 the plaintiff, together with her husband, D. W. Riley agreed to convey and did convey to the said defendant, E. L. Allen, eighty acres of land situated in Coffey County, in the State of Kansas to-wit: The North half of the South East quarter of Section thirty-five (35) in Township twenty two (22) of Range sixteen (16) that said land was the property of plaintiff and stood upon the records in said County in her name and was conveyed to the said E. L. Allen at the request of the said defendants and was of the reasonable and actual market value of $1500; That the said defendants entered into the possession of said lands and immediately thereafter sold and conveyed the same and have now no interest in or control thereof.

Plaintiff further alleges that the said defendants had not
15 filed with the Clerk of the District Court of said Coffey County or elsewhere in the State of Kansas, a copy of the Letters Patent duly authenticated, for such alleged invention, and did not swear or affirm before such Clerk to an affidavit that such Letters Patent were genuine and had not been revoked or annulled or that they or either of them had full authority to sell or barter such patent right, and did not set forth in an affidavit the name, age, occupation and residence of said defendants or either of them, and did not file a copy of such affidavit with the said Clerk of the District Court of said Coffey County, and had not in any manner complied with or attempted to comply with the laws of the State of Kansas in relation to the sale, or the offering for sale of a patent right in said State. That by reason thereof the conveyance and sale of said patent right to plaintiff by defendants for the said territory was in violation of the law and was illegal and void, which fact was well known to defendants but unknown to plaintiff.

Plaintiff further alleges that she has offered to surrender to the defendants, the conveyance of said alleged patent right and to release to them whatever right, if any, may have passed to her by said alleged conveyance; comes now into open Court and makes offer to surrender and release to the said defendants all right or semblance of right she may have in said patent right for the said territory of Kentucky by reason of said conveyance; that she has demanded of the defendants the value of the land so conveyed to them, less said sum of $100 paid to plaintiff at the time of said conveyance and that the defendants have refused and neglected and still refuse and neglect to pay said amount or any part thereof.

2. Plaintiff, for a further cause of action against said defendants, adopts all the allegations and averments hereinbefore made and set out in the statement of the first cause of action herein, and makes the same a part of this Count, the same as if fully set out, and further alleges and avers that, relying upon the validity of said sale and of her right to manufacture and sell the said invention in the State of Kentucky, she removed with her family from the State of Kansas to the State of Kentucky and attempted to engage in the manufacture and sale of such invention. That she employed her husband, D. W. Riley as her agent, to carry on her business of the manufacture and
6 sale thereof. That plaintiff devoted four months' time to-wit:—From the — day of April 1901, to the 1st day of September 1901, in the attempted manufacture and sale of said invention in the State of Kentucky; and that the time so devoted was reasonably worth the sum of $25.00 per month. That the services of her husband, D. W. Riley for the said four months were reasonably worth the sum of $25. per month for said time and that plaintiff is indebted to him therefor in said sum for his said services; that she expended for Railroad fare for herself, husband, mother and niece, who were members of her family, the sum of $17.50 each from Le Roy, Kansas to Louisville, Kentucky and an equal amount for Railroad fare when returning to her home in Le Roy Kansas. That she paid out for board and lodgings for herself and husband, each the sum of $6.00 per week from the 1st day of April until the 1st day of

September, 1901. That she paid out for car fare and traveling expenses in attempting to sell such invention in the State of Kentucky the sum of $50.00 making the plaintiff's total damage the sum of $632.50.

Plaintiff further alleges that there was no market in the State of Kentucky for the said washing machine and that no sales were made and no profits received therefrom.

Plaintiff further alleges that the defendants were informed by her and knew at the time of the conveyance of said territory and the conveyance of said land, that it was the intention of the plaintiff that in case said conveyance was made, to remove to the State of Kentucky, for the purpose of engaging in the manufacturing and sale of the said invention. The plaintiff has been damaged as hereinbefore set out in the sum of $632.50. That she has demanded the said sum of the said defendants and that they have refused and neglected to pay the same or any part thereof. A statement of plaintiff's damage is hereto attached as a part hereof and marked Exhibit "B."

Wherefore plaintiff prays judgment against said defendants for the sum of $1400, the value of the said lands so conveyed as hereinbefore alleged, less the sum of $100 and the further sum of $632.50 as her damages as hereinbefore specified and for costs of this action.

W. F. SHALE AND
W. F. MEANS,
Atty's for Plaintiff.

17 EXHIBIT "A."

The Dewey Washing Machine.

Assignment of Territory.

For State, County, Town or Shop Rights.

Whereas, Erasmus W. Allen, of Hiawatha, County of Brown, and State of Kansas, did obtain Letters-Patent of the United States for improvements in Washing Machine, which Letters-Patent are numbered 605,987, and dated the 21st day of June 1898.

Whereas, I, the undersigned, am now the sole owner of all rights under said patent in the below recited territory, and

Whereas, F. J. Riley of Le Roy, County of Coffey, and State of Kansas is desirous of acquiring an interest in the same;

Now, therefore, this indenture—witnesseth, that for and in consideration of the sum of Five Thousand Dollars to me in hand paid, the receipt of which is hereby acknowledged, I have sold and assigned, and by these presents do sell and assign, to the said F. J. Riley all the right, title and interest I have in and to the said invention for, to and in the State of Kentucky and for, to and in no other places; the same to be held and enjoyed by the said F. J. Riley and her legal representatives, to the full end of the term for which said Letters-Patent were granted, and as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof, I have hereunto set my hand and affixed my seal this 30th day of January A. D. 1901.

ERASMUS W. ALLEN,
By E. L. ALLEN, *Att'y in Fact.* [SEAL.]

—— ——.
—— ——.

No legalization required.

18 EXHIBIT "B."

Four months' time from the — day of April 1901, to Sept. 1st, 1901, at $25.00 per month	$100.00
Debt incurred to D. W. Riley for four months' services, from — day of April, 1901, to Sept. 1st, 1901	100.00
Railroad fare from Le Roy, Kansas to Louisville, Kentucky and return for plaintiff	35.00
For D. W. Riley	35.00
For Mother and niece—each $35.00	70.00
Board of plaintiff and D. W. Riley at $6. per week for four months	200.00
Amount expended in manufacturing said invention	62.50
Amount expended for car fare and traveling expenses, in attempting to sell said invention	50.00
	$632.50

Filed May 12, 1902.
W. E. ARCHER,
Clerk of the District Court.

Thereafter and on the 19th day of June, 1902, the said defendants filed in said court their motion to strike out from the second count of said amended petition, and on the same day filed in said court their demurrer to the First and Second Counts of said amended petition, which motion and demurrer are in words and figures as follows:

19 In the District Court, Sitting Within and for Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN, E. L. ALLEN, Defendants.

Demurrer.

Comes now the above named defendants and demurrer to the first and second counts of plaintiff's amended petition filed herein, and as grounds for said demurrer, allege, as follows:—

First—Said First Count of said amended petition does not state facts sufficient to constitute a cause of action against said defendants or either of them.

Second—That several causes of action are improperly joined.

Third—That said second count or cause of action does not state facts sufficient to constitute a cause of action against said defendants or either of them.

S. F. NEWLON,
RYAN & RYAN,
Att'ys for Defendants.

Filed June 19, 1902.
W. E. ARCHER,
Clerk of the District Court.

20 In the District Court, Sitting Within and for Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Motion.

Comes now the above named defendants and move the Court to strike out of and from the second Count of plaintiff's amended petition, filed herein and every item thereof.

Second—That the Court strike out of and from said second count or cause of action the item for Railroad fare of plaintiff's husband, mother and niece the sum of $17.50 each and an equal amount returning from Louisville, Kentucky to Le Roy, Kansas. Item of $6 per week for board, and item of $50.00 for car fare and traveling expenses in attempting to sell such invention in said State of Kentucky, for that said items and each thereof cannot be recovered against defendants or either of them; that the facts stated in said second count of said amended petition are not sufficient to entitle plaintiff to recover said items or either of said items against said defendants or either of them.

S. F. NEWLON,
RYAN & RYAN,
Att'ys for Defendants.

Filed June 19, 1902.
W. E. ARCHER,
Clerk of the District Court.

And thereafter, on the 16th day of June, at an adjourned term of said court, the said motion and demurrer to said amended petition came on to be heard, and said demurrer was in part overruled, to which defendants objected and excepted. The said ruling and order of the court on said demurrer and the Journal Entry thereof is in words and figures as follows:—

21 FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Now on this 16th day of June at an adjourned term of this Court, comes on for hearing the demurrer of said defendants to the petition of said plaintiff; the plaintiff appearing by W. F. Means, and W. F. Shale, her attorneys, and the defendants appearing by Ryan & Reeder and Sample F. Newlon, their attorneys, and the Court having heard the same does over-rule said demurrer as to the first Count of said petition, defendants excepting, and does sustain said demurrer to the second count of said answer (petition), plaintiff duly excepting, and thereon the said plaintiff elected to stand on her petition without amendment and defendants allowed until the 15th day of September 1902 to answer to said petition and plaintiff allowed ten days thereafter to reply, and cause continued until the next term of this court. Defendants' motion to strike out withdrawn.

W. I. STUART, *Judge*

O. K.
W. F. MEANS.

O. K.
RYAN & REEDER.
SAMPLE F. NEWLON.

22 In the District Court, Sitting Within and for Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

And now on this 20th day of June 1902, at the adjourned term of the Regular May 1902 term of this Court came again the parties to said action, plaintiff by her Attorneys W. F. Means and W. F. Shale and defendants present by their attorneys, Sample F. Newlon and Ryan & Reeder and thereupon came on to be heard the motion of defendants to make said amended petition more specific, definite and certain and the demurrer of defendants to the first and second counts of said petition, it having been agreed that said demurrer and motion might be filed at the same time and heard together, and after argument of Counsel on due consideration, the Court doth order and adjudge that the demurrer to the first Count of Plaintiff's amended petition be and the same is overruled; defendants excepting; and that said demurrer to the second count of plaintiff's said amended petition be and the same is sustained; plaintiff excepting; and thereon plaintiff elected to stand on the allegations of its said amended petition as to the second Count or cause of action therein, and thereon defendants asked and were given until the 15th day of September 1902 in which to file an answer to said amended petition

and plaintiff given ten days (10) thereafter in which to plead thereto; and thereon defendants withdrew their motion to make said amended petition in certain matters more definite and certain.

It is further ordered that this case be continued until the next term of this Court.

W. I. STUART,
Judge of the District Court.

O. K.
RYAN & REEDER.
W. F. MEANS.

And thereafter and by order of court and consent of parties, on the 11th day of October, 1902, the said defendants filed in said court their answer to said amended petition, which answer is in words and figures as follows:—

23 In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Answer.

First. Comes now the above named defendants and for their answer to the amended petition filed by plaintiff in the above entitled action alleges:—

That on June 21st, 1898, the United States of America duly issued Letters Patent under the seal of the Commissioner of the Patent office of the United States of America to said defendant Erasmus W. Allen, for improvements on a Washing machine, which Letters patent were numbered 605,987 and which is the same patent right described in plaintiff's amended petition and the said defendant Erasmus W. Allen, has ever since been the patentee and owner of said patent right on said washing machine and has been the owner of the territory of the United States of America for said patent right, except small portions thereof, sold and deeded to other parties, and was at the time alleged in said amended petition the owner of the territory of the State of Kentucky and the State of Tennessee, with the lawful right to sell and transfer the same and to make deeds therefor and to sell, transfer and convey the right to manufacture, own use and sell said patent right in the said territory, and that he as such patentee and owner of said patent right had the right under the Constituion and laws of the United States to sell and deed said patent right for the said territory to said plaintiff, notwithstanding the provisions of the Laws of the State of Kansas, Chapter 182, Section (1) and (2) of the Session Laws of 1889 requiring a vendor, barterer or seller of patent rights within any County of the State of Kansas *to file* with the Clerk of the District Court of such County, copies of the Letters Patent duly authenticated and at the same time swearing or affirming to an affidavit before such Clerk that such

Letters Patent are genuine and have not been revoked or annulled, and that he has full authority to sell or barter the right so patented, and requiring a copy of such affidavit to be filed in the office of said Clerk.

24 Defendants allege that said Statute of the State of Kansas is unconstitutional and is in contravention of the Federal Constitution and Statutes or Laws of the United States.

Defendants further allege that said defendant E. L. Allen acted as the agent and attorney in fact for said defendant, Erasmus W. Allen in said alleged transaction and acted only in that capacity.

Second. Said defendants, for further answer, to plaintiff's said amended petition filed herein, make the first paragraph or defense of this answer, a part of this, the second paragraph as fully and completely as if set out herein in full and in addition thereto allege; That said plaintiff and her said husband, D. W. Riley, who was at the time of the said alleged transaction, acting with and for, and was then and there plaintiff's duly authorized and acting agent, and co-partner and had a joint interest with said plaintiff in said transaction, and in the purchase of said patent right and said territory, and in the transactions hereinafter alleged, and the said plaintiff and her said agent and copartner were informed and knew that the said defendant, Erasmus W. Allen, was the patentee and owner of said patent right and had the full power, right and authority to sell and deed the same and to sell and deed said territory with the right to manufacture sell and use said patent therein; That at the time of said alleged transaction and said sale and as a part of one and the same transaction, the said defendant Erasmus W. Allen, through his duly authorized agent and attorney-in-fact, said defendant E. L. Allen *sold to* said plaintiff and her said husband, agent and co-partner D. W. Riley, said patent right for the territory of the State of Kentucky, and the East half of the State of Tennessee; that there was no agreement as to the money valuation or consideration to be paid for said patent right for any particular part of said territory, but that the said plaintiff and her husband, agent and co-partner then and there owned the eighty acres of land described in plaintiff's amended petition and owned the patent right for said Washing Machine for the territory of the Counties of Butler, Wilson, Coffey and Osage in the State of Kansas, except the West township, including eight by five miles off of Osage County and the said plaintiff and her said husband agent and Co-partner were then and there dealers in and vendors of patent articles and in patent rights and vendors of territory for patent rights, and then and there agreed to sell and deed to said defendant Erasmus W. Allen, said eighty acres of land and the patent right for said Washing Machine for the territory in Kansas herein last described, and to deed and convey to said defendant Erasmus W. Allen, the right to use, manufacture and sell said patent right in said territory of Kansas and in consideration of said patent right to said territory of Kentucky and the east half of the State of Tennessee and the sum of $100.00 in cash, the said plaintiff and her said husband, agent and co-partner, made acknowledged and delivered to

the said defendant, Erasmus W. Allen a deed of said patent right above described to said territory in Kansas and made, acknowledged and delivered to said defendant E. L. Allen, for the use and benefit of said defendant Erasmus W. Allen, a warranty deed for said eighty acres of land described in plaintiff's said amended petition; That at the time of making said trade and agreeing to make and deliver said deed for said territory of Kentucky and the east half of Tennessee and to receive and accept a deed for said Kansas land and for said patent for said territory in Kansas defendants were not informed and did not *know that* the title to said eighty acres of land in Kansas stood in the name of plaintiff or that she was the owner thereof but just before said deed to the same was executed defendants were informed thereof and were informed that the patent right for said washing machine to said territory in the State of Kansas stood in the name of plaintiff's said husband, agent and Co-partner D. W. Riley and thereon said plaintiff and her said agent and co-partner requested said defendants in making said trade and in transferring said territory that the patent for the territory of the State of Kentucky be deeded to said plaintiff and that the patent for the east half of the State of Tennessee be transferred and a deed thereof made to said D. W. Riley and in accordance with such request, the said defendant Erasmus W. Allen, made and acknowledged and delivered a deed for said patent for said territory of Kentucky to said plaintiff and for said territory in Tennessee to said D. W. Riley. Defendants allege that a part of the consideration for the said territory of Kentucky and the part of the territory of Tennessee was the deeding of said patent right for said washing machine to said defendant Erasmus W. Allen for said territory of Kansas and at the same time of said transaction and the making and delivery of said deed for said washing machine for said territory in Kansas to said defend-
26 ant Erasmus W. Allen and the delivery of the deed thereof by plaintiff and her said husband agent and co-partner to said defendants, the said plaintiff had not filed nor had her said husband agent and co-partner D. W. Riley filed or caused to be filed with the Clerk of the District Court of the said Coffey County, where said transaction took place or elsewhere in the State of Kansas, a copy of the Letters Patent, duly authenticated, for such alleged invention and did not swear or affirm before said Clerk to an affidavit that such Letters Patent were genuine and had not been revoked or annulled or that they or either of them had full authority to sell or barter such patent right and did not set forth in an affidavit the name, *age*, occupation or residence of said plaintiff or said D. W. Riley or either of them and did not file a copy of such affidavit with the said Clerk of the District Court of the said Coffey County and had not in any manner complied or attempted to comply with the laws of the State of Kansas relative to the sale, barter or offering for sale or barter of patent rights in said State. That at the time of making said deed for said patent, for said territory in the State of Kansas, said plaintiff and her said husband agent and Co-partner D. W. Riley were residents of Coffey County, Kansas and did business therein and elsewhere in said State. That by reason of the

premises, plaintiff is not entitled to recover in this action and is not entitled to recover back any part of the consideration alleged to have been given for said patent right for the territory of the State of Kentucky.

Defendants further allege that the Constitution of the United States and the Statutes thereof are involved and the construction thereof are involved in this case; that the question raised by the pleadings in this case are purely questions involving the Constitution of the United States and the Federal Laws thereof. That by reason thereof, the amended petition of plaintiff does not state facts sufficient to constitute a cause of action against these defendants or either of them.

Third: Said defendants, for further answer, deny each and every allegation in said amended petition made and contained not herein expressly admitted.

Wherefore defendants pray that this case be ordered transfer-ed to the Circuit Court of the United States for the District of Kansas, for trial, and that said plaintiff take nothing as against de-
27 fendants by reason of this action and that said defendants recover their costs herein with other proper relief.

S. F. NEWLON,
RYAN & REEDER,
Att'ys for Defendants.
W. F. SHALE,
Att'y for Plaintiff.

Filed October 11 1902.
W. E. ARCHER,
Clerk of the District Court.

10/10/02. Let this be filed as of Proper time.

STATE OF KANSAS, *Brown County, ss:*

E. L. Allen being first duly sworn on oath says that he — one of the defendants in the above entitled action, that he has heard read and knows the contents of the above and foregoing answer and that all the allegations therein contained are true.

E. L. ALLEN.

Subscribed and sworn to before me this 11 day of Oct. 1902.
[SEAL.]
W. E. ARCHER,
Clerk of the District Court.

(Error in numbering.)

Thereafter, on the 24th day of October, 1902, the said plaintiff filed in said court her motions to make said answer more specific and certain and to separately state and number also on said day filed in said court her demurrer to the first defense set up in said answer, which said motion and demurrer are in words and figures as follows:

28 In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Demurrer.

Comes now said plaintiff and demurs to first defense set forth in said defendants' answer filed herein for the reason that the same does not state facts sufficient to constitute a defense to plaintiff's petition.

W. F. MEANS,
W. F. SHALE,
Plaintiff's Attorneys.

Filed October 24, 1902.
W. E. ARCHER,
Clerk of the District Court.

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Motion.

Plaintiff moves the Court to require the defendants to make the second defense set up in their answer more specific and certain as follows, to-wit:

1st. State whether the agreement referred to in line 6 on page three was in writing or verbal and if in writing to set out a copy thereof.

2nd. That defendants be required to set out a copy of the deed referred to in line 14 on said page three.

W. F. SHALE,
W. F. MEANS,
Att'ys for Plaintiff.

Filed October 24, 1902.
W. E. ARCHER,
Clerk of the District Court.

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Motion.

Comes now the plaintiff and moves the Court to separately — and number the defenses set up in the defense numbered "Second" in their answer.

W. F. SHALE,
W. F. MEANS,
Att'ys for Plaintiff.

Filed October 24, 1902.
W. E. ARCHER,
Clerk of the District Court.

29 Thereafter and on the 7th day of November, 1902, the said defendants filed in said court their motion for an order changing the place of trial and the jurisdiction of said case and certifying the said case to the United States Circuit Court, for the reasons therein set forth, which motion is in words and figures as follows:

In the District Court, Sitting Within and for Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Motion.

Comes now the above named defendants and moves the Court to change the Court place of trial and jurisdiction and order this case certified to the United States Circuit Court, sitting within and for the State of Kansas and as grounds for such change defendants allege:

First: That this, the District Court of Brown County, Kansas, has no jurisdiction to hear and try said case.

Second: That the Federal Constitution and statutes of the United States are involved in the trial of this case.

Third: That the matters and things set up in plaintiff's amended petition filed herein, contravenes, the Constitution of the United States and the Federal Statutes thereof, and that said Constitution and laws are alone involved in the matters at issue in this case.

Affidavits and record evidence will be used on the hearing of this motion.

S. F. NEWLON,
RYAN & RYAN,
Att'ys for Defendants.

Filed November 7, 1902.
W. E. ARCHER,
Clerk of the District Court.

Thereafter and on the 18th day of November, 1902, before said Court, the said motion of defendants to certify said case to the United States Circuit Court and the demurrer of plaintiffs to the answer of defendants, came on for hearing and said motion of defendants was denied, and said demurrer was sustained, to both which rulings defendants at the time objected and excepted. The order and judgment of the Court thereon and the Journal entry thereof, is in words and figures as follows:

30 FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Now on this 18th day of November 1902, plaintiff appeared by W. F. Shale and W. F. Means her attorneys and the defendants by Sample F. Newlon and S. L. Ryan their attorneys, and thereon came on for hearing the application of the said defendants to remove said action to the Federal Court and the Court being fully advised in the premises and having heard the argument of Counsel doth overrule said application, the defendants duly excepting thereto; and thereon came on for hearing the demurrer of plaintiff to the first Count in defendants' answer and the Court having heard the argument of Counsel and being fully advised in the premises doth sustain said demurrer; the defendants duly excepting thereto, and electing to stand upon the allegations in the said first Count of their answer, and thereon the plaintiff is given 20 days in which to reply and the case is continued until the next term of this Court.

Thereafter on the 16th day of December, 1902, by consent of parties, the said plaintiff filed in said court her reply to the answer of defendants, which reply, duly verified, is as follows:

31 In the Brown County, Kansas, District Court.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Reply.

Plaintiff denies each and every statement, allegation and averment in the answer of said defendants contained and set forth except such as are admitted in the petition of this plaintiff on file in this cause and this plaintiff specifically denies under oath the existence of the Co-partnership alleged in said defendants' answer.

Wherefore plaintiff prays for judgment as set forth in her petition.

W. F. MEANS AND
W. F. SHALE,
Att'ys for Plaintiff.

STATE OF KANSAS, *Coffey County, ss:*

Francis J. Riley, the above named plaintiff being first duly sworn on her oath alleges that she has read the above and foregoing reply and that the statements and allegations therein contained are true and the said Francis J. Riley on her oath denies the Co-partnership alleged and set forth in the defendants' answer, filed in the above entitled cause.

FRANCIS J. RILEY.

Subscribed and sworn to before me this 5 day of Dec. A. D. 1902.

J. S. COVERT,
Notary Public.

[SEAL.]
My Commission expires April 4, 1906.

Let this be filed as of proper date.

RYAN & RYAN AND
SAMPLE F. NEWLON,
Attorneys for Defendants.

Filed December 16, 1902.
W. E. ARCHER,
Clerk of the District Court.

And said case remains at issue in said court until the — day of ebruary, 1903, when, at the regular term of said court, the said case ame on for trial on its regular order on the docket, and after a jury as duly empaneled, the said plaintiff introduced her evidence to stain her cause of action as follows:

2 In the District Court of Brown County, Kansas.

FRANCES J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Be it remembered that on this — day of February, 1903, the above titled cause came on for hearing in the Court aforesaid and a jury ing empaneled, the plaintiff introduced her testimony, to maintain r cause of action, as follows:

FRANCES J. RILEY, being called for the plaintiff, sworn, testified as llows:

Direct Examination by W. F. MEANS:

Q. You are the plaintiff in this case?
A. Yes sir.
Q. Where do you live?
A. Coffey County, Kansas.
Q. How long have you lived there?
A. Six years last October.
Q. Where were you living during the latter part of 1900, and Jan- y and February of 1901?

A. Le Roy, Coffey County, Kansas.

Q. You may state when you first met either of the defendants here, Erasmus W. Allen, and his son?

A. The old gentleman came to our house, either the last day of December or the 1st of January.

Q. Of what year?

A. Of 1900 or 1901.

Q. When did you see the young man?

A. It was the day on which they were to come and do the washing, I think it was the next day after the old man was there.

Q. What occurred when they came there?

A. They did the washing and rubbing with the machine; had the machine there to try it.

Q. How long were you there at that time?

A. I should judge they were there probably an hour or an hour and a half at that time; I don't remember just exactly.

Q. What kind—What was the name of the washing machine?

A. The Dewey.

Q. What, if anything, did they say to you when they were there in regard to selling you territory?

A. They didn't say anything at that time, that I remember of; not to me anyway.

33 Q. When was anything first said to you, that you recollect of, in regard to selling you territory, trading you territory for your 80 acres farm near Le Roy?

A. It was after they had sold the four counties to Mr. Riley; I made the remark, that, if he did well with his territory, I might get a trade for my farm; and before they left that day, the young Mr. Allen proposed trading then, and I told him I wasn't ready; I wanted to see what Mr. Riley did with his before I made any trade.

Q. When did you next see them?

A. I don't remember just the time; it must have been 3 or 4 weeks after that, when the young Mr. Allen came back.

Q. Where did you see him?

A. The first I saw of him, was just outside the yard, where Mr. Riley was cutting wood.

Q. When did you talk to him?

A. He came in the house and talked to me after he had talked with Mr. Riley and proposed trading, and I told him I wasn't ready to trade.

Q. What day of the week was that?

A. My recollection is, it was on Monday.

Q. How long did he stay at that time?

A. I couldn't state positively whether it was in the forenoon or afternoon but he stayed until meal time.

Q. When did you next see him?

A. The next day.

Q. What time?

A. In the morning pretty soon after breakfast, that he was there.

Q. Who was he talking to?

A. Me and my mother.

Q. Where was Mr. Riley?
A. He was out cutting wood.
Q. What did Mr. Allen say in regard to trading for the place?
A. He proposed a trade to me, and I told him, I didn't want to trade, that it was all that I had, and I couldn't afford to throw it away; and I asked him during the talk, I don't remember just what time, I asked him if he had any property that he could trade, that would make me a home.
Q. What did he say?
A. My recollection is, he said he didn't have anything that he thought I would like, that he had a house out in the western part of the state, northwestern part, I don't remember just what
34 county, and I told him, I didn't want that; he told me then, he says, you trade for some territory, and any time you want to you can trade the territory for a home any place.
Q. What territory was he talking about trading at that time?
A. He didn't have any specific territory to trade, just anything he had on hand.
Q. When was anything first said about the territory of Kentucky?
A. After we agreed to trade, he wanted to know what territory I wanted, and where I wanted my territory; and he told me what he had, and let me make my selection; I didn't know anything about territory, or patent rights either——

Objected to by the defendant. Objection sustained.
Plaintiff excepting.

Q. Who first suggested Kentucky in your conversation with Mr. Allen?
A. Why I suppose it was him, because, I didn't know he had it.

The defendant moves to strike out the answer——

A. He mentioned Kentucky, and said he had Kentucky and Michigan, and I could have either.
Q. What did you tell him?
A. I told him I would take Kentucky, that there was a good part of Michigan that was not inhabited, and I didn't consider it quite as thickly settled.
Q. What was next done, after you had gotten that far in your talk?
A. The deeds was made then.
Q. You may state over what period Mr. Allen was there talking to you, relative to this sale, Mr. E. L. Allen?
A. He was there, I think, my recollection is, he came there on Monday, and the deed was made on Wednesday night, after night, about 11 o'clock.
Q. During what part of the time from Monday until Wednesday night, was he there?

Objected to by the defendant as immaterial.
Objection overruled, defendant excepting.

A. He was there all of the time except at meal times.
Q. Where was Mr. Allen during this time, or Mr. Riley?

A. He was out cutting wood.

35 Q. Cutting wood most of the time?

A. Yes sir, except at meal time, he would come in and get his meals and go back to work.

Q. Where did this land of yours lay, how far from Le Roy?

A. Pretty close to Le Roy, only a half mile.

Q. Improved any?

A. It had a small house on it, and a little barn and well.

Q. Are you acquainted with the market value of such lands, what they were at that time, and in that vicinity?

A. Somewhat.

Q. You may state what the market value of this 80 acres of land, which you deeded to Mr. Allen, was at that time?

Objected to by the defendants, as incompetent, and no foundation laid. Objection overruled, defendants excepting.

A. About $20, an acre.

The Defendants move to strike out the answer as the petiuon alleges the value to be $1400. Motion overruled, defendants excepting.

Q. You may state what, if anything, you received from Mr. Allen for this land, except this territory of Kentucky?

A. He gave me $100, as a loan, conditional——

Q. Tell us what was said about that $100?

Objected to by the defendants, because the pleadings show on both sides that $100, was paid. Objection overruled, defendants excepting.

A. He first offered to give me $50, but I wouldn't accept it; then he offered to loan me $100 on the property——

Q. State what was said?

A. He wanted to help me to get started, is the way he put it.

Q. What further was said.

A. He said he would loan me $100, and if the sales amount to $5000, I should return the $100, if not the $100 was mine.

Q. You may state if you made any sales in this territory of Kentucky or receive- any profits from the transaction in any way?

A. No sir, not at all.

Objected to by the defendants as incompetent and not within the issues. Objection over-ruled, defendants excepting.

Q. You may state whether Mr. Erasmus W. Allen was at your house at the time the land was conveyed to him?

A. No sir.

36 Q. To whom did this 80 acres of land belong?

Objected to by the defendants as incompetent, not the best evidence. Objection over-ruled, defendants excepting.

A. It was mine.

The defendants move to strike out the answer as incompetent, and

no foundation laid for its introduction. Motion overruled, defendants excepting.

Q. State whether or not you ever received anything from the Mr. Allens except this $100, for this land?

Objected to by the defendants as incompetent and calling for the conclusion of the witness. Objection sustained, plaintiff excepting.

Q. Was there any other consideration for the conveyance of this land, except the receipt of this $100, the transfer of this territory of Kentucky for this patent right?

Objected to by the defendants as incompetent and calling for the conclusion of the witness. Objection overruled, defendants excepting.

A. No sir.

Q. I show you this paper marked exhibit A, and get you to state if that is the instrument given to you conveying you the territory of Kentucky, that you have spoken of?

A. Yes sir.

Q. Calling your attention to the endorsements on the back of that, I will ask you if that is your signature?

A. Yes sir.

The plaintiff offers in evidence this deed with the endorsements on the back of it, marked Exhibit A, and offers that the record may show that Mrs. Riley releases all right or claim, whatsoever, to the territory of Kentucky conveyed in that instrument.

Objected to by the defendants as incompetent, irrelevant, immaterial. Objection overruled, defendants excepting.

See "Exhibit A" attached to Petition herein, page 5—back of sheet.

Cross-examination by S. L. RYAN:

Q. You have lived in Le Roy for about 6 years?

A. Yes sir.

37 Q. The first time you ever saw the defendants in this case was about the last of December or the first of January before this transaction?

A. Yes sir.

Q. Where did you see them?

A. At my house.

Q. What ones were at your house?

A. The old gentleman came first.

Q. That is this old gentleman here?

A. Yes sir; and the next day, I think it was the next day, they both came; they brought one of these machines.

Q. They had one of these manufactured machines, that they manufactured here at Hiawatha to demonstrate the work with?

A. Yes sir.

Q. Was anybody else with them?

A. No sir.

Q. Did they come again to your house about that time?

A. My recollection is, they came back that afternoon.

Q. Who came with them?
A. Well, I think they came alone.
Q. Did their wives, or any women folks of the Allen family come with them?
A. They were there once or twice, but I couldn't state positive just what day they were there.
Q. But at one of the times they came, some of the women folks came with them?
A. Yes sir.
Q. Were they there when they were doing the washing and showing you how the machine worked?
A. No sir.
Q. About when was it that this washing was done that you speak of?
A. Along in the forepart of January; I couldn't say exactly the date.
Q. What part of Le Roy is your home in?
A. Well, it is not in the same property it was then?
Q. At that time where was your home?
A. In the northeastern part of town.
Q. Did you talk with Mr. Erasmus W. Allen at the time he was there at your house?
A. Certainly.
Q. At that time did he tell you he owned the patent for this washing machine?
A. Yes sir.
Q. He told you he had invented it and got a patent?
A. He talked that in the conversation, he wasn't talking particularly to me.
Q. He was talking to your husband and you?
A. Yes sir.
Q. Where did he talk to your husband first, if you know?
38 A. At my home, I suppose.
Q. Do you know whether he talked on the outside or in the house, first?
A. I couldn't say anything about that.
Q. Your husband has acted for you in this transaction, a good deal hasn't he?
A. Which transaction?
Q. In this transaction; in all of your business transactions?
A. No more than any one's husband would, I suppose.
Q. You, at that time you say your husband bought some territory?
A. Yes sir.
Q. In Kansas?
A. Yes sir.
Q. Now, you say you said something to him about trading a piece of land for this patent, for some territory.
A. I spoke about it.
Q. Did you speak about it, or your husband?
A. I spoke about it first.

Q. You don't know what he may have said about it when you were not present before?

A. No sir.

Q. At that time you had this land with a real estate agent for sale didn't you.

A. I don't remember, whether I had it in their hands just then or not?

Q. Do you know a real estate agent by the name of Rohr?

A. Yes sir.

Q. Did you have it in his hands then?

A. I did not, then.

Q. You did at the time, this trade was made between you and Mr. Allen?

A. No, sir, I didn't have it in his hands then.

Q. *When* did you put it in — hands after that?

A. No sir.

Q. I will ask you, if you didn't in January 1901, have this land in Mr. Rohr's hands to be sold for $1300?

A. No sir, I did not.

Q. You didn't have it in at $1300?

A. It was a year and a half or two years before that I gave it to Mr. Rohr for three months to sell at that figure, but he was—that is, I should receive that much for it.

Q. I will ask you if it wasn't in his hands at the time this trade was made?

A. No sir.

Q. Didn't you tell Mr. Allen it was there for sale?

A. I may have told him it was for sale, but not with Mr. Rohr.

Q. Didn't you tell him Mr. Rohr had it for sale?

A. No sir.

39 Q. Did you hear your husband tell him that?

A. No sir.

Q. Who showed Mr. Allen this land?

A. Mr. Riley did.

Q. Was that before or after he talked with you—Did Mr. Riley show it to him before or after the time Mr. Allen first talked with you about the sale?

A. Well, I couldn't tell you as to that, I don't remember.

Q. On this occasion when Mr. Allen came there he first talked with your husband outside of the house?

A. Yes sir.

Q. About how long did he talk out there?

A. Well, I couldn't say just how long, but it wasn't very long.

Q. Where did they go then?

A. Mr. Allen came in the house, Mr. Riley stayed out there.

Q. Did they go to look at the land before he came in the house?

A. Not that I remember of.

Q. You don't recollect whether they went to look at the land before they came in the house or afterwards?

A. No sir.

Q. You couldn't tell how long they talked out side there?

A. No sir.

Q. You don't remember whether it was in the forenoon or afternoon?
A. No sir.
Q. Mr. Riley has appeared and acted for you in this whole transaction hasn't he?
A. No sir; not the whole transaction.
Q. You sent him to Brown County to bring this suit?
A. Yes sir.
Q. He appeared at the taking of depositions for you?
A. Yes sir.
Q. He has appeared and acted for you all through this case—In speaking of this transaction and of this trade you have always said "we" have you not?
A. No sir.
Q. I will ask you, if Mr. Riley isn't the one that has done this business almost exclusively with reference to this transaction and this patent right?
A. No sir.
Q. At the time this transaction was engaged in that you speak of, was there some of Tennessee transferred to you?

Objected to by the plaintiff as incompetent and immaterial.
Objection over-ruled, plaintiff excepting.

A. No sir, not to me.
Q. Was there some of the territory of Tennessee for this patent, transferred to you and your husband?
A. It was to Mr. Riley.
40 Q. What part, if you remember?
A. I believe it was the east half.
Q. Now was there some patent right territory transferred to Mr. Allen by—at the same time by you or your husband?
A. Not that I know of.
Q. Was there by your husband?
A. I don't believe there was.
Q. Who did the writing in these transactions?
A. Mr. Riley, I suppose.
Q. Were you present when the writings were drawn up?
A. Yes sir.
Q. And who did the writing, filling out the deeds and instruments?
A. I don't know whether there was any deeds made, that is for the territory, I don't remember about that.
Q. Did you and your husband sign any papers?
A. I signed no papers except the deed to the land.
Q. Who drew that up?
A. Mr. Covert of Le Roy, a Notary Public.
Q. He drew that up; who drew up this deed that has been offered in evidence conveying this territory in the State of Kentucky?
A. Mr. Allen.
Q. Which Mr. Allen?
A. E. L. Allen.

Q. You knew at the time he was acting for the old gentleman?
A. I supposed he was acting for himself as well as the old gentleman.
Q. We don't want your supposition.
A. According to his own statement he was acting for himself.

The defendants move to strike out the last answer as the conclusion of the witness. Motion overruled, defendants excepting.

Q. The old gentleman told you he owned this patent right when he was there, you have stated?
A. Yes sir.
Q. Did he show you his letters patent and show them to your husband?
A. I couldn't say.
Q. You can't remember whether he showed them to either of you?
A. No sir.
Q. Did Mr. E. L. Allen show you the letters patent or a certified copy of them at the time of this transaction the time the land was deeded?
A. I don't remember that either.
Q. You know they were either shown to you or your husband do you not?
A. I couldn't say as to that either.
Q. Did you look at the deed after it had been made out and signed?
A. Yes sir.
Q. Was it handed to you or your husband first, or do you remember?
41 A. I don't remember; I think it was left laying on the stand where he made it out.
Q. Did he show you his power of attorney, authorizing him to deed as agent and attorney of fact of his father?
A. I don't remember seeing anything of the kind.
Q. Do you remember whether he showed it to your husband?
A. No sir.
Q. Where did your husband sign; he signed some paper?
A. He signed the deed to the land.
Q. Did he sign a deed to the Kansas Territory for this patent, at the same time?
A. I don't know.
Q. Don't you know Mr. Allen drew three deeds there in your house, this one that is offered in evidence, the one for the half of Tennessee to Mr. Riley, and the one from Mr. Riley to the old gentleman Allen, and that your husband signed that one?
A. If he did, I don't know it; he may have done so.
Q. You say you received $100?
A. Yes sir.
Q. Then you and your husband together received the deed for the territory of Kentucky for this patent, half of Tennessee and $100 in cash?

Objected to by the plaintiff as not cross-examination, and assuming something which has not been testified to.
Objection sustained, defendants excepting.

Q. Was all of the talk had, with reference to these trades there at your house, or was some of it had down town?
A. All I know anything about was made at the house.
Q. You went back to Kentucky, did you?
A. Yes sir.
Q. And your husband?
A. Y's sir.
Q. Did you go to Tennessee also?
A. No sir.
Q. How long did you stay back there?

Objected to by the plaintiff as not cross-examination and immaterial. Objection overruled, plaintiff excepting.

A. Between 3 or 4 months.
Q. Did you come from the country originally?
A. No sir.
Q. What country did you and your husband come from?
A. Ohio.
Q. How near the Ohio River?
A. We lived in the Northwestern part of the State.
42 Q. When you were talking in this conversation, your husband told Mr. Allen you wanted Ohio?
A. I don't know whether my husband did or not, but I did.
Q. After you had agreed to make the trade, I will ask you if the Map of the United States was taken down and look- over, and the question was talked over about what territory had been disposed of and what was still owned by Mr. Erasmus W. Allen?
A. I got the map there in the house and looked over it there.
Q. Who did the looking over of that map?
A. Mr. Allen and I did.
Q. Did your husband look over it too?
A. I don't remember whether he did or not.
Q. Do you remember what your husband said about it, about the transaction, about the territory, and what territory you wanted?
A. No sir.
Q. At one of the times, when the Mr. Allens, when the Allens were there with reference to a trade of territory to you and your husband, when some of the women folks were there, I will ask you if you had a patent right or claimed to have a patent right to a dress-cutting process?
A. No sir.
Q. I will ask you is you didn't at one of the times there, in trying to trade the patent right for a dress cutting process, if you didn't take it and demonstrate it, showing how it was done.
A. I had a dress making system, but there wasn't a patent on it.
Q. Didn't you claim at that time there was a patent on it?
A. No sir.

Q. And didn't you offer to sell the Allens territory for that?
A. I did not.
Q. Did your husband?
A. I don't know.
Q. Did you claim to have that process, or did your husband?
A. My husband had it.
Q. Did you state at that time when you were demonstrating it, who owned it, whether your husband or you?
A. I don't remember.
Q. What was said in your presence, there about selling that dress-cutting —, trading it on this territory for this patent.
A. I don't remember what was said about trading it.
Q. About how long was you demonstrating or showing them how it was done?
A. I don't remember how long.
Q. I will ask you if you and your husband had a patent on a fence staple?
43 A. My husband has an interest in a fence staple patent, I believe.
Q. When they were there the first time was there any attempt to trade that patent of Mr. Riley's for their patent?
A. I don't know anything about it?
Q. Did you hear of any talk about that?
A. I don't remember of any.
Q. Did you send your husband up here in Brown County after you had got back from Kentucky with reference to settling up this transaction?
A. I did.
Q. Did he have this fence patent at that time?
A. Yes sir.
Q. He was trying to trade that patent to the Allens in closing up this transaction in getting more territory, was he not?
A. Not to my knowledge.
Q. But you did send him up here.
A. I sent him up to try and get a settlement out of the Allens.
Q. At the time they were down there in this transaction, what other patents did you and your husband have?
A. I don't know of any other.
Q. I will ask you if in your presence there, when you was showing this dress-cutting process, if either you or your husband didn't say to the Allens that you would trade, in substance, that you would trade and wanted to trade Brown County for this dress-cutting process to them for territory in Kansas for this Washing Machine.
A. Well, I didn't have—I didn't have it to trade.

The defendants move to strike out "I didn't have it." Motion sustained, plaintiff excepting.

Q. Was it said in your presence?
A. Not that I remember of.
Q. You don't remember whether it was or was not?
A. I don't remember.

Redirect examination by W. F. MEANS:

Q. You may state if you wrote any letters to Mr. Allen in relation to a settlement of this matter before suit was begun?
A. I did, one.
Q. At what time?
A. I think it was in October or September; I don't remember just the day.
Q. Of what year?
A. 1901.

Recross Examination — S. L. RYAN:

Q. Which one of the Allens did you writ to, E. L. Allen?
A. Of course, I intended my letter for both of them.
Q. Which one did you address it to?
44 A. I think I addressed it to the young man; that is my recollection.
Q. You knew by the deed that Mr. Allen signed and by his talk, that his father was the one that was the owner of this patent?
A. I knew that he was the owner of the patent.
Q. You knew that the young man was acting as agent in the trade didn't you?
A. No sir, not altogether.
Q. You saw he signed it as attorney in fact, didn't you?
A. Yes sir; I didn't know how he signed the deed.
Q. Did you do the writing to these Allens, or did your husband do it?
A. I wrote one letter myself.
Q. How many did he write?
A. I couldn't say?
Q. Do you know of his writing some?
A. Yes sir.
Q. When he wrote, was it with your authority?
A. Well, in part, I suppose it was.
Q. What do you mean "in part;" whenever it suited you for it — be yours, that was your act, when it didn't suit you, it wasn't, is that what you mean?
A. He done some writing without saying anything to me about it; of course, that wasn't my act.
Q. But in a general way, he was acting for you, wasn't he?
A. I suppose he was.
Q. He generally transacted all the business didn't he?
A. Part of it, yes sir.
Q. Did you write the letter or did he, that is, actually do the writing, the letter along about the latter part of December 1900 to one of the Allens, when they were in Arkansas, before they came to your house?
A. Mr. Allen (Riley) did the writing.
Q. Did you keep a copy of that letter?
A. No sir.

Q. Have you got any letters in your possession, received from either of the Allens?
A. I have one, I think.
Q. Here with you?
A. I think it is.
Q. Have you the deed from Mr. Allen for this Kansas territory to your husband for this washing machine?
A. No sir.
Q. Do you know where it is?
A. No sir.
Q. Was you present when he got that deed?
45 A. I don't remember whether I was or not.
Q. Did you see it?
A. I don't remember of looking at it.
Q. I will ask you if you remember whether that was signed by Mr. Allen, the old gentleman, or by E. L. Allen as attorney in fact.
A. I just told you I did not remember of looking at it.
Q. Didn't you state to me in Le Roy, when we were taking depositions that these were kept there in the house in a trunk or desk, where you had access to them?
A. I did.
Q. Did you look for it afterwards?
A. Yes sir, I did; I made a thorough search for all of the papers.
Q. And just one letter is all that you found?
Q. I didn't say that one letter was all I could find.
Q. What did you find?
A. I found several letters or papers.

Objected to by the plaintiff as immaterial and not pertaining to the case. Objection over-ruled, plaintiff excepting.

Q. What other deeds or papers did you find.
A. I found the deed from Mr. Allen conveying to Mr. Riley the Tennessee territory.
Q. Is that here?
A. It is.
Q. Did you find the one from Mr. Allen conveying any territory in Kansas to your husband?
A. No sir.

Redirect examination by W. F. MEANS:

Q. Just state what was said to you by either of the Allens relative to their interest in this patent right and the proceeds of it.

Objected to by the defendants as not redirect examination. Objection overruled, defendants excepting.

A. E. L. Allen said in my presence, it didn't make any difference which one made the sale the profits were divided between the two brothers and the father.
Q. Which two brothers.
A. E. L. Allen and Wallace Allen.

Recross examination by S. L. RYAN:

Q. Didn't he say at that time that they traveled together, and that they got a share in the way of commissions for their work?

46 A. How was that question?

Q. He said, he and his brother got that in the way of commissions for their work, didn't he?

A. I don't remember just how he put it; but it didn't make any difference which one made the sale, the profits were divided equally between the three.

Q. Didn't he tell you his father owned the patent, and all he had in it was pay for what he done?

A. I don't remember whether he did or not.

Q. I will ask you if it was on the second day of January that the Allens were there and showed you the working of this machine by doing the work?

A. It was sometime in February or January; I don't remember the exact date.

Q. You saw the machine at work at that time?

A. Yes sir.

Q. Did you have one of those machines in your house after that at any time?

A. Yes sir.

Q. I will ask you, if after you had examined its workings if you didn't make and sign the following: "Leroy, Kansas, 1–2 1901. Our washing was done just as good by the Dewey, as I could have done it on the board. What would take me until afternoon, usually, was done in less than an hour. All streaks of dirt were removed. In fact, I would like to have one. Frances Riley." Didn't you sign that?

Objected to by the plaintiff as incompetent, irrelevant, immaterial and not cross examination. Objection sustained, defendants excepting.

Q. Isn't that your signature there to that?

A. Yes, I guess it is.

Q. Do you know whether it is?

A. Yes sir.

Redirect examination by W. F. MEANS:

Q. What was the date on which you made this deed for the 80 acres of land to Mr. Allen?

Objected to by the defendants as not the best evidence. Objection over-ruled, defendants excepting.

A. January 31st, is my recollection.

Q. What year?

A. 1901.

Recross examination by S. L. RYAN:

Q. Were all the papers signed the same day?

A. No sir.

Q. When did you get your deed to this Kentucky territory?

A. The night before, the 30th of January.

47 Q. When was the deed to the Tennessee territory delivered?

A. The same time.

Q. Was it after supper?

A. Yes sir.

Q. You say it was the next morning you went down and made the other deed?

A. Yes sir.

Q. And that night it was arranged that you would make the deed to the land in the morning?

A. Yes sir.

Q. And you went down early in the morning and made it and it was delivered?

A. Yes sir.

Q. Who delivered the deed, you or Mr. Riley, who handed it to Mr. Allen?

A. I don't remember as to that, who handed it to him.

Q. Do you remember whether it was handed to him in your presence or not?

A. No sir.

E. W. ALLEN, being called for the plaintiff, sworn, testified as follows:

Direct examination by W. F. MEANS:

Q. You are one of the defendants in this action?

A. Yes sir.

Q. Have you in your possession or under your control a letter written by F. J. Riley or Frances J. Riley, along in October 1901, to you or your son?

A. No sir.

No cross examination.

E. L. ALLEN, being called for the plaintiff, sworn, testified as follows:

Direct examination by W. F. MEANS:

Q. Mr. Allen have you in your possession or under your control a letter written by the plaintiff, Frances J. Riley, along in September or October 1901?

A. I think I have.

Q. Will you get it and produce it?

A. We have two of them, do you want them both?

Q. One at a time.

(Letters are produced by the witness.)

Cross-examination by S. L. RYAN:

Q. You say you received this from Mrs. Riley, do you
48 know anything personally, about who wrote them; do you know Mrs. Riley's handwriting?

A. Not that I could swear to it.

Q. You don't know whether she signed these letters or not?
A. No sir.
Q. Did you get this letter yourself?
A. No sir.
Q. You didn't get it out of the mail?
A. No sir.

The plaintiff now offers in evidence the deposition of C. T. High, which is as follows:

Notice to Take Deposition.

In the District Court of Brown County, State of Kansas.

STATE OF KANSAS, *Brown County, ss:*

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

To Defendants Erasmus W. Allen and E. L. Allen and S. L. Ryan and Sample F. Newlon, their Att'ys:

You are hereby notified that the Deposition of —— —— and other Witnesses, to be used as evidence on the trial of the above entitled action, in behalf of the Plaintiff will be taken at the office of J. S. Covert, Notary Public in the City of Le Roy in the County of Coffey in the State of Kansas, on 26th day of January 190– between the hours of eight o'clock A. M. and six o'clock P. M. and that the taking of the same will be adjourned from day to day, between the same hours, until said depositions are completed.

W. F. MEANS AND
W. F. SHALE,
Attorneys for Plaintiff.

It is hereby agreed that the Depositions in above case may be taken in short hand, and service of the above notice hereby acknowledged, this 15th day of January 1903.

RYAN & RYAN,
Attorney- for Defendants.

49 STATE OF KANSAS, *County of Coffey, ss:*

Depositions of sundry witnesses taken by me, J. S. Covery a Notary Public within and for the County of Coffey, in the State of Kansas, on the 26th day of January 1903, between the hours of 8.00 o'clock A. M. and 6.00 o'clock P. M. at my office in the City of Le Roy, in said County pursuant to the annexed notice to be read in evidence in behalf of the plaintiff in an action pending in the District Court, within and for the County of Brown, in the State of Kansas, wherein Francis J. Riley is plaintiff and Erasmus W. Allen and E. L. Allen are defendants. Said plaintiff appears by her husband, D. W. Riley, acting for her and is her agent and the defendants by their attorney S. L. Ryan.

C. T. HIGH of lawful age being by me first duly examined, cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposes and says:

Q. (1) State your name, residence and occupation?
A. C. T. High, Le Roy, Kansas; and occupation, Notary Public and Collection attorney.
Q. (2) How long have you been a resident of Coffey County, Kas.?
A. Forty Five years.
Q. (3) Are you now and were you during the month- of January and February 1901, acquainted with the Market Value of the North Half of the South East Quarter of Section (35) Town. (22) and Range (16) of Coffey County, Kansas?
A. Yes Sir.
Q. (4) What was the reasonable market value of the land described in the preceeding question during the said month- of January and February, 1901?

(Objected to by Mr. Ryan, Att'y for defendants, as incompetent and no foundation for the introduction.)

A. It was worth twenty dollars per acre, I should think; It would be my judgment.
Q. (5) Were you interested or in any way associated with a tract of land adjoining this described Eighty on the North?

(Objected to by defendant as incompetent, immaterial, leading and no foundation for the question.)

A. I was.
50 Q. (6) Did you sell or cause to be sold 120 acres adjoining the aforesaid described eighty since the time mentioned of Jan. or Feb. 1901?

(Same objection as last above.)

A. I had charge of and sold about 140 acres adjoining the land described that latter part of 1901.
Q. (7) What did this 140 acres bring per acre?

(Same objection.)

A. A few cents over twenty dollars per acre; I don't remember the exact cents.

Cross-examination by Defendant S. L. RYAN:

Q. Describe the eighty acres of land in dispute fully?
A. It is the North——(Interrupted by defense; there is no dispute about the number.)
A. The land lays directly east of Le Roy, the West line being one half mile East of the East line of the City; the long way of the eighty is east and west; The improvements are on the East end; House, Stable and Orchard; Crooked creek runs through the land, possibly a little west of the Center; The East portion is high land sloping to the Creek and very nearly if not all under cultivation; The portion

west of the Creek is all Bottom and mostly in grass at that time, Maybe all of it. I would not be positive. There is some timber along the Creek. The Creek runs North to South and crooked. In extreme high waters the creek over-flows a portion of that bottom land. I do not know that there is any gumbo or hard pan on it.

WITNESS continues: A house but cannot give the exact dimension. A box house built with the form of an L. or T. I think there are three rooms; a Shed stable. An acre or such a matter in bearing orchard.

By DEFENSE:

Q. Has land increased in value very considerable in the vicinity of Le Roy in the past year or year and a half?

A. Yes sir.

Q. Do you not know that this 80 acres of land had been in the hands of Real Estate Agents in Le Roy prior to the first of February 1901 to be sold at $1300 and the commission to be paid for selling out of that price?

A. I did not.

Q. Do you not know that it was soon after the first of Feb-
51 ruary 1901 placed in the hands of S. B. Rohrer, Real Estate Agent of Le Roy, Kansas by one of the defendants and that the best price that could be secured for it was $1200 at which it was sold?

Answer. I did not.

Q. You may state who is — present conducting this examination on the part of the plaintiff?

A. D. W. Riley the husband of Mrs. Riley.

Q. Do you not know that prior to about Feb. 1st 1901, Mr. Riley the husband of plaintiff, and acting for her, was only holding this 80 at thirteen hundred dollars and offering it for sale at that price?

A. I never heard Mr. Riley offer it for sale or knew that it was for sale at that price until after it was sold or traded off and then had no knowledge of the amount received or placed upon the land.

Q. You are judging the value of this land largely from the price the land brought adjoining it, that you were interested in the sale of?

A. That and the sale of similar lands.

Q. What do you say this 80 acres of land is reasonable worth now?

A. It is worth about $2000 now.

Q. Have you been attorney for or advised with Mr. and Mrs. Riley with reference to this land or this law suit?

A. I have not.

Q. At whose request did you come here to testify?

A. At the request of Mr. Riley.

Redirect examination by Mr. D. W. RILEY:

Q. Associating the 140 acres mentioned by the witness and the preceeding 80 acres described, what is the condition of Crooked Creek respecting these two tracts of land?

(Objected as incompetent and immaterial.)

A. Runs north and south through both tracts of land.

C. T. HIGH.

Also T. S. CHAMBERLAIN of lawful age being by me first duly examined, cautioned and solemnly *sowrn* to testify the truth, the whole truth and nothing but the truth deposes and says:

Q. What is your name, your residence and occupation?

A. T. S. Chamberlain, Le Roy, Coffey County, Kansas, Real Eastate agent.

Q. How long have you resided in Coffey County, Kansas?

A. Five years and 10 months.

52 Q. Are you now and were you during the month of Jan. and February 1901 acquainted with the Market value of the North half of the South East Quarter of Section (35) Township (22) Range (16) in Coffey County, Kansas?

A. I am and was at the time, the way land was selling.

Q. What was the reasonable market value of the lands described in the preceeding question, during the said months of January and February 1901?

(Objected to by S. L. Ryan, Attorney for the defense, as incompetent and no foundation for the introduction.)

A. The way land was selling at that time it was worth about $1500.00.

Defendant moves to strike out the answer as incompetent not responsive and no foundation for its introduction.

Cross-examination by S. L. RYAN:

Q. Have you ever been over this land, by which I mean, to go over it carefully and examine it carefully?

A. I have not prior to that time but I have since in February or March of that year.

Q. Can you tell what were the improvements on that place in January, 1901, How much was in cultivation, how much was in timber, how much was in grass. If so state fully?

A. I think the house is 14 x 24 one story boxed up and sealed with one room on the west. The stable for four horses with a straw or hay roof. About one acre in orchard, Eighteen acres in grass, the creek and timber together would take up about 5 acres. The remaining 57 acres were in cultivation.

Q. State the lay of the land and general course of this stream the general width and whether crooked or straight?

(Plaintiff's attorney D. W. Riley objected to the question as very improper for the reason that it has not been shown by this witness that there is a stream passing through it.)

A. The East half slopes to the West, bottom land lays level nearly, the stream runs through the short way of the place about the middle of it. From when it enters this land it runs a little south east about

a third of the way across the place then it runs a very little west of South on through. The general width of the banks about 20 feet and the bottom about 10 feet.

53 Q. What do you know about this creek over-flowing this bottom land?

(Objected — by D. W. Riley, the plaintiff's examiner, for the reason that it has not been shown that there is a stream passing through said lands; by proper examination.)

A. There is a little of it over-flows. I cannot tell how much. It is caused from breaking over from above.

Q. If you know, about how much have of any lands in the neighborhood of Le Roy increased in market value in the past month?

A. From five to ten dollars per acre.

Q. You may state whether there is some gumbo or hard pan in the land surrounding Le Roy?

A. There is some gumbo but no hard pan that I know of.

Q. Have you ever had this particular tract of land placed with you for sale? Or listed?

A. Not until the present owner got it. However I think that at one time Mrs. Riley told me I could sell it if I got a certain price but it was not really listed. I think she wanted $1600.00 for it at that time.

(Defendant moves to strike out the last part of the answer after the word "listed" as incompetent, voluntary and not responsive.

Q. Do you not know that this land was listed with S. B. Rohrer, a Real Estate Agent of Le Roy, Kansas for some time previous to February 1st, 1901 at $1300, the commission to be taken out of that price?

A. I knew it was listed with S. B. Rohrer but about the first of February and not prior to that it was listed at $1300 and he was to get a commission out of that sum.

Q. Is it not a fact that the land was on the market some time after February 5, 1901 and no purchaser could be found at a price exceeding $1200?

A. It was sold within the next thirty days, after Feb. 5, or about that time. I do not know what it was sold for.

Direct examination.

Q. What is the present value of the 80 acres of land in question?

(Objected to; incompetent, not redirect, immaterial.)

A. Worth $25.00 per acre.

Q. By whom was the land listed, with S. B. Rohrer at that time February 1, 1901?

A. I cannot answer.

54 Q. State if you know if Mrs. D. W. Riley listed the land with S. B. Rohrer?

A. I do not know.

Q. State if the 80 acres in question sold within thirty days after

the 5th of Feb. 1901 in the interest of the man or person placing or listing it with S. B. Rohrer for sale?

(Objected to as incompetent and immaterial.)

A. I suppose I did. I don't know for certain.

T. S. CHAMBERLAIN.

Also G. W. RINGLE of lawful age being first duly examined, cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth deposes and says:—

Q. State your name, place of residence and occupation?
A. G. W. Ringle, Le Roy, Kansas, Hay and Grain dealer.
Q. How long have you resided in Coffey County, Kansas?
A. Came here in 1859 and have only been out of the County about four years.
Q. Are you now and were you then during the month of Jan. and February 1901 acquainted with the market value of the North half of the South East quarter of Section thirty-five town. 22 of Range 16 in Coffey County, Kansas.
A. I am probably.
Q. What was the reasonable market value of the land described in the preceeding question during the said months of Jan. and February 1901?

(Objected to as incompetent and no foundation laid for the question.)

A. My judgment is based on what other land was selling at and that quality was running from 18 to 20 dollars.
Q. What official township position have you held in Le Roy Township for the last past three years.
A. Township trustee and Assessor.

Defendant moves to strike out each and all of the above answers of the witness as incompetent, not responsive and no foundation laid for such answer.

55 Cross-examination by S. L. RYAN:

Q. You may state if you know about how much if any land has increased in value in the vicinity of Le Roy of Coffey County, Kansas in the past 20 or 22 months.
A. Well I should think one third.
Q. Isn't it a fact that it has increased in value generally nearly one half?
A. Well in some instances it has.
Q. What do you base your judgment or ideas of values upon?
A. Upon these different transactions and upon the values these people placed upon their land.

Redirect examination:

Q. What is the present value of the 80 acres of land in question?

(Objected to as incompetent, not redirect examination and no foundation laid for the question or answer and that it is immaterial.)

A. The way that other land is being sold it ought to sell for 30 or 35 dollars per acre.

(Defendants move to strike the answer out — not responsive and no foundation laid for the same.

G. W. RINGLE.

Filed.

STATE OF KANSAS, *County of Coffey, ss:*

I, J. S. Covert, a Notary Public within and for the County and State aforesaid do hereby certify that C. T. High, T. S. Chamberlain and G. W. Ringle were by me first severally sworn to testify the truth, the whole truth and nothing but the truth and that depositions by them respectively subscribed were reduced to writing by myself in the presence of the said witnesses and were subscribed by the said witnesses in my presence and were taken at my office in the City of Le Roy, in the County of Coffey in the State of Kansas as specified in the annexed notice. That I am not Counsel, Attorney or relative of either party or otherwise interested in the event of this suit.

Witness my hand and Notarial Seal at my office in said County this 26th day of January, A. *M.* 1903.

[SEAL.]

J. S. COVERT,
Notary Public.

My commisison expires on April 4, 1906.

56 *Fees.*

Appr. Docket N. Page 537.

Notary	$5.80
Witnesses:	
C. T. High	$1.50
T. S. Chamberlain	$1.50
Mileage	.20
G. W. Ringle	1.50
	$10.50

Not proof read—Original not in files.

The plaintiff now offers in evidence the deposition of T. S. Chamberlain, which is as follows:

See page 71 of this record just preceeding this.

The plaintiff now offers in evidence the deposition of G. W. Ringle, which is as follows:

See page 74 of this record just preceeding this.

57 FRANCES J. RILEY being recalled for the plaintiff, testified as follows:

Direct Examination by W. F. MEANS:

Q. You may state of you recall any further conversations had with Mr. E. L. Allen relative to these deals, that you failed to state in your direction examination; do you recall anything that he said about his coming to see you again relative to this tract of land?

Objected to by the defendants as leading. Objection over-ruled, defendants excepting.

A. I don't know whether I do just now.
Q. Do you remember anything that he said about it being necessary for him to come back if you didn't want to trade?

Objected to by the defendant as leading. Objection over-ruled, defendants excepting.

A. Yes sir.
Q. State what was said?

Objected to by the defendants, as incompetent, irrelevant, immaterial and being suggested by a leading question in redirect examination. Objection over-ruled, defendants excepting.

A. The evening before the deeds were made, before the transaction was completed, Mr. Allen——
Q. Which Mr. Allen?
A. The young Mr. Allen, E. L., asked me if I was willing to trade, and said if I wasn't there wasn't any use for him to come back, because he couldn't get any trade out of Mr. Riley if I wasn't willing there wasn't any use talking to him; also, the first time he came there, when he went out to talk with Mr. Riley awhile, he came in the house and said it wasn't — use to talk to him, he had come in to talk to me.

Cross-examination by S. L. RYAN:

Q. He told them in substance that Mr. Riley wasn't willing to trade unless you was?
A. No sir, he didn't tell me that.
Q. He said he wasn't willing to trade?
A. Not that I know of; I said, he said there wasn't any trade in him.
58 Q. Said Mr. Riley wasn't willing to trade?
A. Yes sir.
Q. He didn't say not willing to trade unless you was?
A. No sir.
Q. You just now stated that in your direction examination; you just now stated he came in and said he wasn't willing to trade unless you were?
A. Not that I know of; I said, he said there wasn't any trade in him, and he had come in to talk to me.

Redirect Examination by W. F. MEANS:

Q. What conversation—on which day was it, he made this remark, there wasn't any trade in him?
A. The first day.
Q. This other conversation, when was that?
A. It was the last day.
Q. What was it he said in that conversation?

Objected to by the defendants as incompetent and having been gone over. Objection sustained, plaintiff excepting.

Recross-examination by S. L. RYAN:

Q. I hand you a letter identified by the Stenographer as Exhibit B, dated Le Roy Kansas, October 1st, 1901, and ask you to look at the signature of Frances Riley and tell me whose writing that is?
A. It is my signature.
Q. Is that your writing in the body there?
A. Yes sir.
Q. Did you write that and mail that to Mr. Allen?
A. I did.
Q. I hand you another letter identified by the stenographer as exhibit C, dated Le Roy, Kansas, October 5th, 1901, and ask you to examine the writing and the signature, and state whose writing and whose signature that is?
A. It is mine.
Q. Did you write that and mail it to Mr. Allen?
59 A. I did, that is, to Mr. Allen.
Q. Is that one of the ladies that was at your house at the time they had the washing machine there?
A. Yes sir.

It is admitted by the parties to this suit, that at the time of the alleged trade and execution of the deed by the defendants to the plaintiff Frances J. Riley, of the territory of Kentucky to the patent right in question that said defendants, nor anyone for them had filed in the office of the Clerk of the District Court of Coffey County, Kansas, authenticated copies of the letters patent to said washing machine, and had not filed, either by themselves or through other persons, an affidavit that they were the owners of said patent or either of them, and that they were authorized to sell territory for the same and to sell said patent right. And it is further admitted by the parties to this suit, that said plaintiff had not filed in said office an authenticated copy of said patent right or any affidavit covering the same patent right, and that said plaintiff nor her husband D. W. Riley had not filed in the office of the Clerk of the District Court of Coffey County, Kansas, any authenticated copy of letters patent to any article of plaintiff's patented under the Government of the United States, to any article, which it is alleged that said plaintiff and her said husband had traded or agreed to trade and sell to said defendants, and neither said plaintiff or her said husband had filed in said office any affidavit that they or either of them were the

owners of any such patents and entitled to sell any territory for the same. The plaintiff however objecting to the competency of such testimony as having no application to the issues now on trial. That they did not or anyone for them file these letters patent or authenticated copies, or the affidavit above mentioned, and neither side has complied with the statute of this state in reference to such patent rights. Each side however, objecting to the competency of that kind of testimony; and the defendants objecting on the ground
60 that such statute is unconstitutional and is in contravention to the constitution and laws of this State and of the United States.

Plaintiff here rests her case in chief.

And thereupon the defendants filed their demurrer to the evidence of the plaintiff, which demurrer is submitted without argument, and is by the Court, upon due consideration, over-ruled, defendants excepting.

Said demurrer is in words and figures as follows:

61 In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Demurrer to the Evidence.

Comes now the defendants in the above entitled action, after the plaintiff has introduced all of her evidence and rested her case and demurrerers thereto for the reason that plaintiff has not shown facts sufficient to entitle her to recover herein against said defendants or either of them.

SAMPLE F. NEWLON AND
RYAN & RYAN AND
C. W. REEDER,
(*Att'ys for Defendants.*)

Filed February 10, 1903.
R. W. HICKS,
Clerk of the District Court.

And said demurrer being argued was by the court on due consideration overruled. Defendants excepting.

62 ERASMUS W. ALLEN being called for the defendants, sworn, testified as follows:

Direct examination by S. L. RYAN:

Q. You are one of the defendants in this case?
A. Yes sir.
Q. Where do you live?
A. Hiawatha.
Q. How long have you lived at Hiawatha?

A. Four years.
Q. You are the patentee of this washing machine in dispute?
A. I am.
Q. Your invention?
A. Yes sir.
Q. When did you first make the acquaintance of Mrs. Riley and Mr. Riley?
A. About the 1st of January; two years ago, or a little over.
Q. Where at?
A. At his place.
Q. In what place?
A. In Le Roy.
Q. How old are you Mr. Allen?
A. Seventy-four.
Q. You may examine that paper, and state whether that is the letters patent for this washing machine?
A. It is.

The defendants now offer in evidence the letters patent issued by the Government of the United States, under its seal, for this patent in controversy, marked by the Stenographer Exhibit D, and is in words and figures as follows:

63 THE UNITED STATES OF AMERICA:

No. 605,987.

To all to whom these presents shall come:

Whereas Erasmus W. Allen, of Holton, Kansas, has presented to the Commissioner of Patents, a petition praying for the grant of letters patent for an alleged new and useful improvement in Washing-Machines, a description of which invention is contained in the specification of which a copy *os* hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided, and whereas, upon due examination made the said Claimant is adjudged to be justly entitled to a patent under the law.

Now, therefore, these letters patent are to grant unto the said Erasmus W. Allen, his heirs or assigns for the term of seventeen years from the twenty first day of June, one thousand eight hundred and ninety eight, the exclusive right to make, use and vend the said invention throughout the United States, and the Territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office, to be affixed at the City of Washington, this twenty-first day of June, in the year of our Lord one thousand eight hundred and ninety eight and of Independence of the United States of America, the one hundred and twenty second.

[Seal Patent Office, United States of America.]

WEBSTER DAVIS,
Assistant Secretary of the Interior.

Countersigned.
C. H. DUELL,
Commissioner of Patents.

64 United States Patent Office.

ERASMUS W. ALLEN, of Holton, Kansas.

Washing-machine.

Specification Forming Part of Letters Patent No. 605,987, Dated June 21, 1898.

Application filed November 18, 1897, Serial No. 658,981. (No model.)

To all whom it may concern:

Be it known that I, Erasmus W. Allen, a citizen of the United States, residing at Holton, in the county of Jackson and State of Kansas, have invented a new and useful Washing-Machine, of which the following is a specification:

The invention relates to improvements in washing-machines.

The object of the present invention is to improve the construction of washing-machines and to provide an exceedingly simple and inexpensive one which will be capable of rapidly and thoroughly washing clothes without injuring them and with the least possible labor.

The invention consists in the construction and novel combination and arrangement of parts, as hereinafter fully described, illustrated in the accompanying drawings, and pointed out in the claim hereto appended.

In the drawings, Figure 1 is a perspective view of a washing-machine constructed in accordance with this invention, the cover being closed. Fig. 2 is a similar view, the cover being open. Fig. 3 is a vertical sectional view, the parts being arranged as shown in Fig. 1. Fig. 4 is a horizontal sectional view.

Like numerals of reference designate corresponding parts in the several figures of the drawings.

1 designates a washing machine body, preferably consisting of a cylindrical tub of galvanized iron; but it may be constructed of wood and have any other preferred shade, and it is provided with a horizontal top 2, to which is hinged a rectangular cover 3. The top 2, which is preferably constructed of segmental keepers, forms a rectangular opening and the cover fits between cleats 4, which are secured to the top 2 at three of the sides of the rectangular opening, one of them having the cover hinged to it. At the other side of the rectangular opening is arranged a wringer-supporting board.

The washing machine body is provided at its bottom, which may be corrugated, with horizontal bars 6, arranged at right angles to each other, extending entirely across the bottom and forming a rubbing surface adapted to be engaged by clothes during the operation of washing and capable of exerting a rubbing action on them. One of the bottom bars is continuous and the other is preferably con-

structed of two sections arranged at opposite sides of the continuous bar.

The top of the washing-machine body is supported by vertical bars or posts 7, mounted upon the ends of the horizontal bars 6 at the inner faces of the sides of the body and extending outward therefrom in order to be engaged by the clothes to rub the same. Although only four horizontal bars and vertical posts are illustrated in the accompanying drawings, yet it will be readily understood that their number may be increased to any desired extent.

During the operation of washing the clothes are carried over the rubbing-bars of the body by a substantially diamond-shaped agitator, 8, mounted upon a shaft 9 and provided at its corners with depending arms 10, consisting of loops and adapted to receive clothes to enable them to be positively connected with the agitator when it is necessary to exert an excessive rubbing action on them. This construction enables the more soiled fabrics or portions thereof to be thoroughly and rapidly washed. The loops or arms 10, which are tapering or V shaped, have straight downwardly converging sides and form distinct tapering openings to enable clothes to be readily wedged in them, so as to make a secure attachment. When the agitator is operated, the clothes rotate with it and are thrown outward against the sides of the body, the bars 6 and posts 7 partially retarding them, and thereby producing the necessary rubbing action.

The shaft 9, which passes through a central bearing-opening of the cover, has its upper portion bent at an angle and arranged at an inclination to form a crank-arm 11, and the lower end of the shaft is passed through a central perforation of the agitator and is bent to form an L shaped arm or hook 12, which extends along the lower face of the agitator to support the latter and projects upward into a perforation or socket of the same. The arm or hook 12 is driven into the agitator, which is preferably constructed of wood, and by this construction the shaft and the agitator are cheaply and securely connected.

The cover is supported and strengthened by a lower cleat 13 and an upper block 14. The cleat 13 is secured to the lower face of the cover and interposed between the same and the agitator, and the block is arranged on the upper face of the cover. The shaft is capable of vertical movements to enable it to adjust itself to the contents of the body, and bear upon the clothes being washed, and its downward movement is limited by a collar or flange 15, arranged at the upper end of the vertical portion of the shaft adapted to prevent the loop-shaped arms from coming in contact with the horizontal bars of the bottom of the body. The upper end of the straight crank-arm is provided with a suitable handle 16, and the said crank-arm, which is disposed at an inclination when the cover is closed, is adapted to be rotated to operate the washing-machine. The cover is fastened in its closed position by pivoted buttons or other suitable fastening devices, and the washing-machine body is provided with a suitable drain-opening in which is arranged a removable plug.

The invention has the following advantages:

The washing machine is exceedingly simple and inexpensive in

construction, and it is capable of quickly and thoroughly washing clothes at the expenditure of a minimum amount of labor.

When the body is constructed of sheet metal, it is adapted to serve as a boiler and may be placed upon a stove or used in connection with any other suitable heating apparatus.

The agitator is vertically movable to adapt itself to the quantity of clothes being washed, and the shaft may be readily lifted to enable the agitator to swing out of the body, and it serves as a handle in opening the cover.

Changes in the form, proportion, and minor details of construction may be resorted to without departing from the spirit or sacrificing any of the advantages of this invention.

What I claim is—

In a washing machine, the combination of a washing-machine body having a rubbing surface, a cover having a bearing-
67 opening, an agitator, and a shaft extending through the bearing opening of the cover and having its upper portion bent at an angle and arranged at an inclination to form a crank, the lower end of the shaft being passed through the agitator and bent at an angle to form a substantial L shaped arm or hook arranged on the lower face of and supporting the agitator and extending into and engaging the same, whereby the agitator is rigidly connected with the shaft substantially as described.

In testimony that I claim the foregoing as my own I have hereto affixed my signature in the presence of two witnesses.

ERASMUS W. ALLEN.

Witnesses:
G. G. EVERHARD.
R. J. LINSCOTT.

68 Q. When you were down there about two years ago the first of last January, did you have any of these washing machines made up?

A. Yes sir.

Q. What are they called?

A. The Dewey.

Q. Where are they manufactured?

—. For me in Hiawatha. Various other places.

Q. Have you got a manufacturing establishment here in Hiawatha?

A. Yes sir.

Q. What is it known by?

A. The Hiawatha—now I can't call it; it is where they are making incubators.

Q. Did you have any conversation with Mr. Allen and Mrs. Allen—or Mrs. Riley and Mr. Riley at that time about the sale to them or either of them of any territory for this washing machine?

A. I think I did.

Q. Which one, or if both, state so?

A. I think both of them.

Q. What, if anything—State whether you had any conversation with Mrs. Riley about any land at that time?

A. No sir.

Q. State whether you had any conversation with Mrs. Riley or Mr. Riley about trading for any land at that time?

A. No sir.

Q. What, if anything, was said to you by either of them as to any land?

A. If the Court will allow me——

Objected to by the plaintiff. Objection sustained, defendants excepting.

The Stenographer reads the question.

A. Mr. Riley was cutting wood, the day before I showed the machine to them,—When I ask him why that small timber was cut, and he said he had a piece of land near by that the tenant
69 had been cutting some off of, and he made up his mind he would secure what wood they wanted off of it.

The plaintiff moves to strike out the answer as incompetent, irrelevant and immaterial. Motion over-ruled, plaintiff excepting.

Q. Who did he say owned the land?

A. He said, "I have a piece of land near town."

Q. What other conversation did you have with him or Mrs. Riley with reference to the piece of land and trading for a piece of land?

A. Not any.

Q. At the time or about the time you showed them this washing machine, you may state what, if any, conversation you had with Mrs. Riley or Mr. Riley or both of them together about trading for any patent that they claimed to have.

Objected to by the plaintiff as not showing who was present. Objection sustained, defendants excepting.

Q. You may state what Mrs. Riley said at that time, while you were down there with reference to trading you this land or a patent right that she had for a dress-cutting chart or process for territory for this washing machine.

Objected to by the plaintiff as incompetent, irrelevant immaterial and not connected with this case in any manner. Objection sustained, defendants excepting.

Q. You may state what, if anything, Mrs. Riley did with reference to showing you a process or patent for dress-cutting or cloth cutting, at that time with relation to a trade for this washing machine, or any part of it?

Objected to by the plaintiff as incompetent, irrelevant, immaterial and not within the issues of this case. Objection sustained, defendants excepting.

Q. What, if anything, did Mrs. Riley say to you at that time about trading, or you to her, about trading any territory for the washing machine for a tract of land?

A. Nothing to me.

Q. Were you present at the time when this trade was made?
A. No sir.

70 The defendants offer to prove by this witness, that Mrs. Riley and Mr. Riley together in the presence of each other claimed to have a patent process or chart for cutting dresses, and that then they were there in January 1901, that she showed and demonstrated how it worked, and that she and her husband together offered to trade that process or patent for it, for territory for this washing machine; that territory was traded in Kansas, a limited amount of territory was traded, the title to it being taken in Mr. Riley's name, and they secured a family right for this patent dress process.

By the COURT: Do you mean, that you offer to prove by this witness that at the time this trade was finally made that this dress making patent was spoken of?

By Mr. RYAN: No sir, I mean when the washing machine was shown there that they traded for some territory in Kansas for this washing machine?

Objected to by the plaintiff as incompetent, irrelevant, immaterial and not within the issues in this case and not a defense. Objection sustained, defendants excepting.

The defendants also offer to prove that at that time, Mr. Riley claimed that they had a patent right to a fence staple, which he and his wife together and in the presence of each other offered to trade in part for territory for the washing machine.

Objected to by the plaintiff as incompetent, irrelevant, immaterial, not within the issues and not a defense in this case.

By the COURT: You don't claim that was a part of the trade finally made?

Mr. RYAN: No sir.

Objection sustained, defendants excepting.

Q. You may state in what capacity E. L. Allen was acting for you?

Objected to by the plaintiff as being admitted by the pleadings. Objection withdrawn.

No answer.

71 E. L. ALLEN being called for the defendants, sworn, testified as follows:

Direct examination by S. L. RYAN:

Q. What is your name?
A. E. L. Allen.
Q. Where do you live?
A. Hiawatha.
Q. How long have you lived in Hiawatha?
A. A year and six months.
Q. Where did you come from to Hiawatha?
A. Seneca, Kansas.
Q. How long did you live in Nemaha County?

A. Eighteen years.
Q. What has been your business?
A. Mostly farming.
Q. In the last year or two?
A. In the last three years, I have been helping my father in the capacity of an agent, in disposing of a patent right.
Q. Whose invention?
A. My father's.
Q. Just one or more than one invention?
A. One or two. Two.
Q. Do you know Mr. Riley and Mrs. Riley?
A. Yes sir.
Q. When did you first get acquainted with them?
A. About the last of December in—I guess it was the second day of January 1901.
Q. Where did you meet them?
A. At their home.
Q. Where?
A. Le Roy, Kansas.
Q. What was your business in going there?
A. To demonstrate the workings of this Dewey washing machine.
Q. That is the machine manufactured in Hiawatha?
A. Yes sir.
Q. Who was present when you showed the machine?
A. My father and I, and Mr. and Mrs. Riley.
Q. Any one else?
A. Not that I know of.
Q. You may state if you saw them after that?
A. I did.
Q. How soon, the first time?
A. About the next day, I think.
72 Q. What, if anything,—What conversation if any, did you have with either of them at that time about trading for any land that either of them owned?
A. I didn't have any.
Q. What did Mrs. Riley say to you about trading you land?
A. Nothing that I know of.
Q. When was the first time that you knew or heard of any land they or either of them having any land to trade for a washing machine, for territory for a washing machine?
A. About the 27th day of January 1901.
Q. Where were you at that time?
A. Siloam Springs, Arkansas.
Q. How did you get the word?
A. Mr. D. W. Riley wrote to my father and it was forwarded there to me, and I took it out of the office there and read the letter.
Q. What did you do with that letter, what became of it?
A. I couldn't tell you; it has been lost.
Q. What did you do with it?
A. I left it with my father.

Q. Have you seen the letter since?
A. No sir.
Q. Will you state the contents or substance of that letter?

Objected to by the plaintiff as not the best evidence. Objection sustained, defendants excepting.

Q. Have you that letter in your possession any where?
A. No sir.
Q. Have you read—W[illegible]d you do with it?
A. Give it to my f[illegible]
Q. Have you looked [illegible]ly to see whether you have it or not?
A. I have.
Q. Do you know whether he has?
A. I don't.

ERASMUS W. ALLEN, being recalled for the defendants, testified as follows:

73 Direct examination by S. L. RYAN:

Q. When did you for the first time learn anything of the desire on the part of Mr. and Mrs. Riley to trade land for this patent washing machine or territory?
A. At Siloam Springs, Arkansas, I received a letter.
Q. About when was that?
A. It was, I would think, about the middle of January.
Q. What year?
A. Of '91.
Q. '91 or 1901?
A. 1901.
Q. State what you did with that letter?
A. I gave it to Embert and let him read it and he handed it back to me.
Q. Who is that?
A. E. L. Allen, then I handed it to my son, Wallace, he read it and handed it back to me, and from that time on, my papers being carried in rather a loose manner, I have no recollection of seeing it, and know nothing about it.
Q. Have you searched thoroughly for it?
A. I have.
Q. Have you been able to find it?
A. No sir.
Q. You never remember seeing it after you put it back in your pocket?
A. No sir.
Q. You may state, as near as you can, the contents of that letter.

Objected to by the plaintiff as incompetent, irrelevant, immaterial, and not showing that he knows Mr. Riley's handwriting or Mrs. Riley's handwriting, or who it was written by. Objection sustained, defendants excepting.

Q. You may state whether you got that letter through the mail?
A. Through the mail.

Q. Whose name was signed to it?

Objected to by the plaintiff as incompetent, irrelevant and immaterial. Objection sustained, defendants excepting.

Q. Did you get more than one letter from Mr. Riley?
A. No sir.
74 Q. Who did it purport to be from?
A. Mr. Riley.
Q. Under what name?
A. I don't remember. C. W. Riley, I believe.
Q. Had you seen him sign his name before that; had you seen his name or signature?
A. Yes sir.
Q. State whether you answered that letter?
A. I did not.
Q. What was done with reference to it?
A. My son went to see them.
Q. Which son?
A. E. L.
Q. Before receiving that letter what, if any, information had you that either of the Rileys had any land that they desired or wanted to trade for patent washing machine?
A. Not any.
Q. You may state the contents of that letter now, if you can?

Objected to by the plaintiff as incompetent, irrelevant, immaterial and not the best evidence. Objection sustained, defendants excepting.

Q. You say you got that out of the post-office?
A. Yes sir.
Q. Postage paid?
A. Yes sir.

D. W. RILEY being called for the defendants, sworn, testified as follows:

Direct examination by S. L. RYAN:

Q. Where do you reside?
A. Le Roy, Kansas.
Q. Are you acquainted with Erasmus W. Allen, who just left the witness stand?
A. Somewhat.
Q. I will ask you if you wrote him a letter between the 15th of January 1901 and the 1st of February 1901?
A. I did write a letter.
Q. Did you sign your name to it, or that of your wife's?
75 A. I don't remember, I think I signed my own.
Q. It was signed either by your name or by hers?
A. Yes sir.
Q. What did you do with reference to enclosing it in envelope and posting it, putting it in the postoffice?

A. If I wrote a letter, in all probability, I mailed it in the regular channel.

Q. Do you recollect about whether you mailed it or not?

A. I don't distinctly recall it; but I remember writing a letter, but I don't just remember the particulars of depositing it in the post-office; it is altogether likely that I did do it.

Q. Did you write one or more at that time?

A. I had it in my mind that I had written two, but I am not positive about that.

Q. About what date was it?

A. Along in the middle part of January 1901.

Q. Do you remember where you directed it to?

A. I don't remember distinctly now, where I directed it to.

Cross-examination by W. F. MEANS:

Q. Were you directed by Mrs. Riley to write this letter?

A. Yes sir, in part.

Q. Did you submit the letter to her after it was written?

A. I think that I did; yes sir I am quite certain that I did.

Q. You acted for her in writing that letter?

A. Yes sir.

E. L. ALLEN being recalled for the defendants, testified as follows:

Direct examination by S. L. RYAN:

Q. You may state as near as you can the contents of that letter?

Objected to by the plaintiff as incompetent, irrelevant, immaterial, not the best evidence, not having shown that it was written to the same place and not having been identified as being the same
76 letter. Objection over-ruled, plaintiff excepting.

A. He wanted to know what would be the chances to trade the territory he had in Kansas and a piece of land that he had for some eastern city or territory.

Q. After you read that letter what did you do?

A. I took the cars and went to Butler and from there to Le Roy, Kansas.

Q. When did you get to Le Roy?

A. The evening of Tuesday, the 29th day of January.

Q. What time in the evening did you get there?

A. About, or just before dusk.

Q. When did you see Mr. and Mrs. Riley?

A. The first remembrance I have of seeing Mr. Riley was the morning of Wednesday, the 30th day of January.

Q. After you read this letter, state what you did with reference to answering it?

A. Didn't answer it; only going in person.

Q. Which one did you see first?

A. Mr. Riley.

Q. Where did you see him?

A. Just north of the house.
Q. About what time in the morning was it?
A. I should judge about 8 o'clock, half past seven or eight.
Q. Did you have any conversation with him?
A. I did.
Q. State it?
A. After the usual greeting outside, I asked him, if they were still in the notion that they would like to exchange their territory there and some land for eastern territory; he said he would want to think it over some; well, I told him he might think it over, and we would go and look at the land.
Q. What was said as to where the land was located?
A. Some half a mile from town, or where they lived; he says we can ride or go afoot; I says, we might as well go afoot; so we started afoot and saw the land.

77 Q. State what you said as you went along?
A. We were talking about the trade; he seemed pleased with the washing machine so far, and thought he could do well, if he had more territory; and we went on down and got through the fence, and got down to the first corner, he was telling me where the lands were; the first land we came to was in wild grass, there was some hay put up there. Mr. Riley told me in regard to having it rented, that he got a share, I think that he got half of the hay, half of the crop; he showed me where his hay was there, said that that was his; we went on down a little further and we come to some ground that had been plowed, and a crop on it that was very poor. I told him it looked like it was very poor land——

Objected to by the plaintiff as immaterial. Objection sustained, defendants excepting.

Q. Well, you examined the land?
A. I did.
Q. What, if anything, did he say about its value?
A. He said that the land ought to be worth some $1400; and I told him it didn't look very valuable; and we went over and talked with the man who was on the land.
Q. You made an examination of the land—How long were you down there?
A. Oh, I would judge an hour and a half or two hours, we wasn't very long.
Q. What, if anything did he say about it being in a real estate agent's hands, to you at that time.

Objected to by the plaintiff as immaterial, not tending to controvert anything that has been said. Objection overruled, plaintiff excepting.

A. He told me he had it in a real estate agent's hands.
Q. At what price?
A. Some thirteen or fourteen hundred dollars.
Q. Where did you go after you got through examining the land?
A. Went back to the house; to Le Roy.

Q. Did you have any conversation with him about a trade on the way back?

78 A. We talked some; but nothing about the trade in particular, we didn't agree on anything.

Q. When you got to the house, where did you go, inside or outside?

A. When we got back we went into the house.

Q. Who did you find there?

A. Mrs. Riley.

Q. Did you have any further talk of trading?

A. Yes sir.

Q. With whom?

A. Mr. and Mrs. Riley.

Q. Which one done the talking, if any one more than another?

A. Mr. Riley.

Q. State whether Mrs. Riley was there all of the time or a part of the time?

A. She was there a good deal of the time.

Q. Was any other person there at any time?

A. I think, for awhile, her mother was in the room.

Q. How long did you stay that day?

A. I think I stayed until noon, went and got my dinner and went back in the afternoon.

Q. Now what was said by Mr. Riley at any time, while you was with him about who owned the land?

A. He gave me to understand that it was his.

The plaintiff moves to strike out the answer as the conclusion of the witness. Motion sustained, defendants excepting.

Question withdrawn.

Q. When you first got there that morning, what did you say about having received the letter?

A. I told him I had received his letter, and he said I needn't to have come so soon; and I told him, I never let business drag, if I could help it.

Q. You went in the house; after you were in the house there, what was said, if anything, before Mrs. Riley about you having received the letter?

A. I don't know that anything was said.

79 Q. You may state what you did, how the trade was made, when it was consummated?

A. We went into the house, and got to talking about the eastern territory; we got a map and we looked at the different states in the east; I told them what was sold and what was not sold; he made the remark that he had lived in Ohio, and had been down in Kentucky; and I told him I would exchange him Kentucky or Michigan; and we finally agreed on Kentucky he thought he would rather have that as the population seemed to be greater; I didn't care, as I was trading in Kentucky for——

Objected to by the plaintiff as the conclusions of the witness. Objection sustained, defendants excepting.

Q. State what was said?

A. Mr. Riley wanted to know what I would do by him; and I told him I would give him Kentucky for his land and the territory he then owned in Kansas.

Q. Territory for what?

A. Patent washing machine.

Q. This same machine?

A. Yes sir.

Q. What territory was that?

A. Butler, Wilson, Coffey and Osage counties.

Q. What did he say to that?

A. He got up and went out of the room, I don't know whether it was for an arm-load of wood or not; I says to Mrs. Riley, what is the reason we can't make this trade go, and she says, I think we would be short of money to go back there and work this machine with; I ask- her what the expense would probably be; we figured what a ticket would cost, and I agreed to advance her $100, or give her that much to "boot;" she went out of the room; after while her and Mr. Riley came back.

Q. After they came back what was said about the Kentucky territory or the Tennessee territory?

A. They came back, they didn't seem to want to take Kentucky alone, said they would have to have more territory. Mr. Riley was a very hard man to trade with——

80 The plaintiff moves to strike out that last part as the conclusion of the witness. Motion sustained, defendants excepting.

Q. State what was said?

A. He wanted more territory.

The plaintiff moves to strike out the answer as a conclusion. Motion sustained, defendants excepting.

A. He said he wanted more territory if he made a trade. We looked at the map, and as Ohio was gone on the north and adjoining territory, he requested that I give him some of Tennessee, as it would be together, and they could work it together; I told him I wasn't going to be small about it; I wanted to do the right thing by them; and we finally agreed on the eastern half of Tennessee.

Q. What did they say they would give for the eastern half of Tennessee; what was you to give them; state what was said between you?

A. Mr. Riley said he would give me the land and territory for Kentucky and the eastern half of Tennessee, if I would give them $100 in money in the trade.

Q. What did you tell him?

A. I told him I would trade that way; and sat down to the table to make out the papers; this was in the afternoon of Wednesday the 30th day of January, he says to me, I want Kentucky in my wife's name, and I told him very well, and he said Tennessee in his name, and I drew the contracts accordingly.

Q. Contracts or deeds?

A. Deeds, transferring the territory of Kentucky to Mrs. Riley and the eastern half of Tennessee to Mr. Riley.

Q. What, up to that time, had been said about any land being in her name?

A. Nothing.

Q. When, if at all, did you find that there was any claim that it was in her name?

A. I didn't find it out before this; when I was drawing these deeds, he says, the land is in my wife's name, and I says, you will have to both sign it, and it don't make any difference to me, whose name it is in; I drew up the papers to Kentucky and the Eastern half
81 of Tennessee and delivered them to them.

Q. Who did you deliver them to?

A. Mr. Riley; and I also drew a deed for the territory he had back to my father and he signed that.

Q. Have you got that deed?

A. I have.

Q. Will you produce it please?

A. Yes sir.

Q. That is the deed that was drawn up and signed there at that time?

A. Yes sir.

Q. By Mr. Riley?

A. Yes sir.

The defendants offer this deed in evidence, signed by D. W. Riley, identified by the stenographer as Exhibit E. Objected to by the plaintiff as incompetent, irrelevant, immaterial and not within the issues in this case.

Q. Who signed that deed?

A. D. W. Riley.

—. Objection overruled, plaintiff excepting.

The deed is in words and figures as follows, to-wit:

The Dewey Washing Machine.
Assignment of Territory.
For State, County, Town or Shop Rights.

Whereas, Erasmus W. Allen of Hiawatha, County of Brown, and State of Kansas, did obtain Letters-Patent of the United States for improvements in Washing Machine, which Letters-Patent are numbered 605,987, and dated the 21st day of June, 1898.

Whereas, I, the undersigned, am now the sole owner of all rights, under said Patents in the below-recited territory, and

Whereas, E. W. Allen of Hiawatha, County of Brown, and State of Kansas, is desirous of acquiring an interest in the same;

Now, therefore, this indenture witnesseth, that for and in consideration of the sum of Eight Hundred Dollars to me in hand paid, the receipt of which is hereby acknowledged, — have sold and
82 assigned, and by these presents do sell and assign, to the said E. W. Allen all the right, title and interest which I have in

and to the said inventions for, to and in the counties of Butler, Wilson, Coffey and Osage, except the south-west township including 8 by 8 miles off of Osage, in the State of Kansas, and for, to and in no other places; the same to be held and enjoyed by the said E. W. Allen and his legal representatives, to the full end of the term for which said Letters-Patent are granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof, I have hereunto set my hand and affixed my seal this 30th day of January A. D. 1901.

D. W. RILEY. [SEAL.]

Received for Record September 25th, 1901, and recorded in Liber W-63, page 105, of Transfers of Patents. In Testimony Whereof I have caused the seal of the Patent Office to be hereunto affixed.

F. I. ALLEN,

[SEAL.] *Commissioner of Patents.*

83 Q. What was said at that time about making this deed to the land?

A. He said on account of the lateness of the hour, it would be necessary to wait until in the morning to make out the deed to the land, and I told him all right.

Q. When this deed that has been offered in evidence was signed by Mr. Riley, what did he do with it, the deed to this territory in Kansas?

A. He turned it over to me.

Q. When did they get the deed to the land, if at all?

A. Next morning.

Q. Who delivered that to you?

A. Mr. Riley.

Q. Where?

A. In the office after the man who made out the papers had made them out.

Q. I will ask you if—Was Mrs. Riley present when the deed was delivered to you?

A. Yes sir.

Q. You may state whether you examined—Whether you knew from the information you had then and that you have gotten since, what the market value of that land was at the time you made this trade?

A. I did.

Q. What was its reasonable market value?

A. Twelve or thirteen hundred dollars.

Q. Did you inquire afterwards as to its value?

A. I did.

Objected to by the plaintiff as immaterial. Objection over-ruled, plaintiff excepting.

Q. What was its condition as to part of it being over-flowed?

A. The west half over-flowed.

Q. How was this creek that run through it, with reference to being crooked or straight?

A. Quite crooked; it run north and south generally; it probably went out a little bit east of where it came in.

Q. When you was having any of this conversation with
84 Mrs. Riley about this trade, what did she say to you with reference to you making the trade with her husband?

A. She told me it would have to be satisfactory with Mr. Riley; that they wouldn't want to make the trade; she didn't want the trade to go unless it was perfectly satisfactory with him; that was about the time I asked her why they couldn't make the trade.

Q. What did she say to you, if anything, about closing up with Mr. Riley, or who you would have to close it up with?

A. She said I would have to close up the trade with Mr. Riley.

Q. Now, in this conversation with Mr. Riley and Mrs. Riley, what, if anything, was said about the valuation to be placed on Kentucky and Tennessee, this land and this territory in Kansas?

A. There was no valuation put on them.

Q. You proposed to give them this territory of Kentucky and Tennessee and $100, for this 80 acres of land and this territory in Kansas?

A. Yes sir.

Q. Did you pay the $100?

A. I did.

Cross-examination by W. F. MEANS:

Q. What time did you say you got back to Mrs. Riley's when you came there in the latter part of January 1901?

A. From the farm, do I understand you?

Q. When you got back to Mrs. Riley's in the latter part of January 1901?

A. I got there on Tuesday in the afternoon, along in the evening about dusk.

Q. And when had you gotten this letter?

A. I think that was about the 26 or 27th, maybe the 25th, along in there.

Q. You knew as a matter of fact that Mrs. Riley had this land, she told you before when you was down that she had it?

A. No sir.

Q. She told you when this former trade was made with Mr.
85 Riley that she had some land that she would like to trade?

A. I have no recollection of any such talk.

Q. Do you mean to say she did not say it to you?

A. She did not.

Q. You think if there had been land there, you would have gone after it the first time?

A. Yes sir.

Objected to by the defendants as incompetent and immaterial. Objection over-ruled, defendants excepting.

Q. When you got back there on Tuesday evening, did you go out to see them that evening?

A. No sir.
Q. You were out by 8 o'clock the next morning?
A. Yes sir.
Q. You met Mr. Riley at the wood-pile cutting wood?
A. Yes sir.
Q. Did you cut a pile there?
A. Not a great deal.
Q. Did you help him any?
A. I guess I piled up some for him.
Q. How long did you stay out there talking to him?
A. Oh! I guess probably an hour.
Q. When you went to see the land?
A. Yes sir.
Q. Came back and went to the house?
A. Yes sir.
Q. Saw Mrs. Riley there?
A. I did.
Q. Talk with her any?
A. Not personally.
Q. How near dinner time was it when you got back?
A. Half past eleven.
Q. How long did you stay?
A. Probably until noon.
Q. Did you take dinner there?
A. No sir.
Q. What time did you get back?
A. About one or half past one.
Q. What was Mr. Riley doing?
A. I think he went down town to mail some letters and I came back with him.

86 Q. Where did you first see him down town?
A. Coming from the post-office.

Q. Did he go into the house with you when he came back from the post-office?
A. Yes, sir.
Q. Did he stay there?
A. Stayed as I have stated; he got up and went out.
Q. Go out to the wood-pile to cut wood?
A. I don't know.
Q. Did you see him cutting wood?
A. No, sir.
Q. You talked with Mrs. Riley while he was gone?
A. Yes, sir.
Q. State what you said to Mrs. Riley?
A. I wanted to know why we couldn't make this trade go, and she said she didn't know, she thought probably they would be short of money?
Q. Had she said anything about a trade previous to that?
A. Not that I recall.
Q. Never had opened her head about this trade?
A. Not that I know of.

Q. Your other conversation had been with Mr. Riley?
A. Nearly so.
Q. If not, what did she say?
A. I naturally got to talking it together with them.
Q. If she said anything what did she say?
A. She didn't say anything that I remember of.
Q. Not a word?
A. I don't remember.
Q. You would say then that she didn't say a word about the trade while you was there?
A. No, I wouldn't say she didn't say anything; but I have no recollection of her saying anything in regard to it.
Q. When did you do this piling of the wood?
A. If, I did any of it, it was the day I was out there.
Q. Did you pile any of it?
A. I wouldn't swear that I did.
Q. Did you or did you not?

Objected to by the defendants as immaterial. Objection sustained, plaintiff excepting.

Q. What did you say to Mrs. Riley after she said she didn't know that they had money enough to take care of the territory?
A. I asked her what the probable expenses would be; and she said something, that they had to buy tickets, they knew about what tickets would cost; and we figured the tickets and we figured that $100 would pay their expenses.
Q. How long were you in there talking to Mrs. Riley while he was gone?
A. Perhaps half an hour.
Q. Then what else was said, except what you have stated in that half hour?
A. Well, she said she wouldn't want the trade made unless Mr. Riley was perfectly satisfied; he told me before this that he didn't want the trade made unless it was satisfactory with her; so I told them it ought to be satisfactory to them.
Q. You knew they would both have to agree before they deeded the land did you?
A. Yes, sir.
Q. Then how long did you stay there that evening?
A. I couldn't tell you.
Q. Stayed until supper time?
A. I guess I went home just before supper.
Q. When did you go back?
A. I have forgotten whether I got back that night or not.
Q. Did you or didn't you; you ought to recall that.
A. I think I came back after supper.
Q. What was said after supper when you came back, then?
A. I made arrangements with Mr. Riley.
Q. What was said?
A. I told Mr. Riley, if we made this trade, I would want him to help dispose of the land.
Q. What did he say?

A. He said he would do so; whatever was right.
Q. How long did you stay that night?
A. I don't remember.
Q. Where was Mrs. Riley?
A. She was there part of the time.
Q. What did she say to you about the land that night?
A. I don't remember anything.
Q. What time did you draw up these papers?
A. After supper; whether it was just after supper or just before supper, I wouldn't be positive; but it was so late Mr. Riley thought we had better not get the deed made to the land until in the morning.
Q. What did Mrs. Riley say about that?
A. I don't remember that she said anything.
Q. When was it they told you that this was Mrs. Riley's land?
A. When we drew the papers; after I had showed them my power of attorney and showed them the Letters-Patent.
Q. Who said it was Mrs. Riley's land?
A. Mr. Riley.
Q. What did Mrs. Riley say?
A. Nothing that I remember of.
Q. Where was she?
A. I don't remember whether she was in the room or not.
Q. What was said by Mrs. Riley about the territory?
A. She thought Kentucky would be the best state; said she wanted Kentucky, thought that that would be the best place.
Q. How did you happen to get Kentucky in the deed to her?
A. At his request.
Q. Did she say anything about it?
A. No, sir.
Q. How did you come to fix the valuation at $5000?

Objected to by the defendants as incompetent, irrelevant, immaterial, not cross-examination and assuming he fixed the valuation at $5000. Objection overruled, defendants excepting.

A. Mr. Riley suggested it or I did, I have forgotten which, we might make the consideration this amount.

89 Q. You say you drew the deed to Mr. Riley for the east half of Tennessee that same evening?
A. Yes, sir.
Q. What consideration did you show in that deed?

Objected to by the defendants as incompetent and the deed is the best evidence. Objection sustained, plaintiff excepting.

Q. What was said about the consideration for the Tennessee territory?
A. I don't remember.
Q. Showing you this paper marked Exhibit F, I will ask you if that is the deed you made on that evening to D. W. Riley for the territory of the east half of Tennessee for this patent right?
A. It is.

The plaintiff offers the deed in evidence as part of the cross-examination. Objected to by the defendants as incompetent and not proper cross-examination. Objection overruled, defendants excepting.

The deed is in words and figures as follows, to-wit:

The Dewey Washing Machine.

Assignment of Territory.

For State, County, Town or Shop Rights.

Whereas, Erasmus W. Allen, of Hiawatha, County of Brown, and State of Kansas, did obtain letters-patent of the United States for improvements in Washing-machine, which letters-patent are numbered 5,987, and dated the 21st day of June, 1898.

Whereas, I, the undersigned, am now the sole owner of all rights under said Patents in the below-recited territory, and

Whereas, D. W. Riley of Le Roy, County of Coffey, and State of Kansas, is desirous of acquiring an interest in the same;

Now, therefore, this indenture witnesseth, that for and in consideration of the sum of Three thousand dollars to me in hand paid, the receipt of which is hereby acknowledged, I have sold and assigned, and by these presents do sell and assign to the said D. W. Riley all the right, title and interest which I have in and to the said inventions for, to and in the Counties east of and including Franklin, Coffey, Cannon, De Kalb, Smith, Trousdale and Anderson of the State of Tennessee, and for, to and in no other places; the same to be held and enjoyed by the said D. W. Riley and his legal representatives, to the full end of the term for which said Letters-Patent are granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In Testimony whereof, I have hereunto set my hand and affixed my seal this 30th day of January, A. D. 1901.

ERASMUS W. ALLEN, [SEAL.]
By E. L. ALLEN, [SEAL.]
Att'y in Fact.

Indorsed: Received and Recorded, March 28th, 1901. Liber 2 Page 147. Transfers of Patents. C. H. Duell, Commissioner Patents.

At what did you fix the consideration for the transfer of deed?

Objected to by the defendants as incompetent and the deed is the best evidence. Objection sustained, plaintiff excepting.

How did you come to fix the consideration at $3000?

Objected to by the defendants as incompetent, immaterial and not cross-examination. Objection overruled, defendants excepting.

A. At the request of Mr. Riley or at my suggestion; I told him that I could do so?

Q. When did you tell him that?

A. When we were drawing up the papers.

Q. Had you owned this territory, had you or your father owned this territory mentioned in this deed marked Exhibit E, the
91 Counties of Butler, Wilson, Coffey and Osage, except the southwest township including 8 by 8 miles off of Osage, in the State of Kansas?

Objected to by the defendant as incompetent, not cross-examination, not the best evidence and immaterial. Objection overruled, defendants excepting.

A. I think he did, my father E. W. Allen.

Q. Did he own this territory when you went the first time to Riley's place, the 2nd day of January, 1901?

Objected to by the defendants as incompetent, immaterial, not the best evidence and not cross-examination. Objection overruled, defendants excepting.

A. He did.

Q. When you first went to Riley's, the 2nd day of January, 1901, what was said to either Mr. or Mrs. Riley in regard to trading them territory, when you went there to exhibit this machine.

Objected to by the defendants as incompetent, irrelevant, not cross-examination and immaterial. Objection sustained, plaintiff excepting.

Q. How long were you at Riley's when you went there the first part of January?

A. About an hour or an hour and a half, I guess.

Q. Did you go back again?

A. Yes, sir.

Q. Who was with you?

A. My father.

Q. Who else?

A. We went back two or three times; once my father and I went; there was once or twice I think there was once, I and my wife and my father and his wife; once my father and his wife and I went.

Q. How many different times were you there at that time, exhibiting this machine at Mr. Riley's?

A. We made one exhibition at Mr. Riley's.

Q. What were these other trips for then?

Objected to by the defendants as not cross-examination and immaterial. Objection sustained, plaintiff excepting.

Q. You say Mrs. Riley said nothing about this land the first time you were there?

92 A. Yes sir.

Q. What did she say about anything?

Objected to by the defendants as incompetent, irrelevant, immate-

rial, not cross examination as to what she said about anything. Objection sustained, plaintiff excepting.

Q. Did you make out and execute any papers the first trip you were there in January, or the times you went back with your father and mother and wife?

Objected to by the defendants as not cross examination. Objection sustained, plaintiff excepting.

Redirect examination by S. L. RYAN:

Q. You heard what Mrs. Riley said about your saying that you and your father and your brother owned 1/3 interest or had 1/3 interest in this patent, you may state whether there was any such conversation as that?

A. No sir.

Q. Did you have any interest in the patent?

A. No sir.

Q. You may state what, if anything, was said about what part of Kentucky they were going to handle or manage, this territory in Kentucky and Tennessee?

A. Just across the river from—I have forgotten the place; Mr. Riley said it ought to be a good place.

Recross-examination by W. F. MEANS:

Q. You say you had no interest in this patent?

A. No sir; I have no interest in it.

Q. You took this land in your name?

A. Yes sir.

Objected to by the defendants as incompetent and not the best evidence. Objection overruled, defendants excepting.

Q. How were you paid for your services, if you had no interest in the patent?

Objected to by the defendants as incompetent and not cross examination. Objection overruled, defendants excepting.

A. I was given 75% of all sales that I made; all property must be converted into money; I paid my expenses, and the expenses of transferring.

92½

Q. He received 75% of what you received?

A. Yes sir.

Redirect examination by S. L. RYAN:

Q. That was paid you as your commission?

A. Yes sir.

Q. Did your brother have an interest in this particular transaction?

A. I think not.

Recross-examination by W. F. MEANS:

Q. With whom was that agreement made that you should have 75%?

Objected to by the defendants as not cross-examination. Objection overruled, defendants excepting.

A. With my father.

W. D. ALLEN, being called for the defendants, sworn, testified as follows:

Direct examination by S. L. RYAN:

Q. Where do you reside?
A. Greenwood County, Kansas.
Q. What is your business?
A. General mercantile business, postmaster, running a farm and stock business.
Q. Were you in Arkansas along in January 1901, about the time your father received a letter from D. W. Riley with reference to some trade or transaction?
A. I was.
Q. State whether you saw that letter?
A. I did.
Q. Who showed it to you?
A. My father gave it to me.
Q. What did you do with it after you got through?
A. Read it and gave it back to my father.
Q. Have you ever seen it since?
A. No sir.
93 Q. State the contents of that letter as you recollect it?
A. It was directed from Le Roy to E. W. Allen, stating that, what would be the chances to trade his 80 acres near Le Roy and Kansas territory for an eastern state.
Q. For what? Eastern state for what?
A. Eastern state for this washing machine.
Q. Do you know about when it was that was received?
A. About the 26th or 27th of January, 1901.
Q. Do you know whether your brother went on after that, soon?
A. He went a day or so afterwards.
Q. You don't know anything about the trade?
A. No sir.

Cross-examination by W. F. MEANS:

Q. Never had anything to do with this transaction?
A. I never had anything to do about the trade.
Q. You have taken a good deal of interest in it, haven't you?

Objected to by the defendants. Objection over-ruled, defendants excepting.

A. I have always been interest- in father's business.
Q. You three are jointly interested in all of these transactions aren't you?

A. No sir.

Q. Didn't you write a letter to Mrs. Riley in which you made some implied threats?

Objected to by the defendants as incompetent and the letter is the best evidence.

Objection sustained, plaintiff excepting.

Q. I will ask you to examine that letter and state whether that is in your handwriting and your signature?

A. Yes sir.

The plaintiff offers this letter, marked Exhibit G by the stenographer, in evidence as part of the cross examination, and as tending to show the interest of this witness. Objected to by the defendants as incompetent and not cross examination, and referring to talks and offers of compromise. Objection over-ruled, defendants excepting.

The letter is as follows:

HIAWATHA, KANS., 10/1, 1901.

Mrs. F. Riley, Le Roy, Kans.

KIND MAD*AM*: I thought I would drop you a few lines to let you know that we had got advice from C. A. Snow & Co., Mumm & Co., & 4 or 5 other as good attorneys that there is in the U. S. & *and* they advise us to let you people go ahead.

Mr. Rufus Robinson which used to be County Att. out west which is well acquainted with you people said he would fight the case free. He said he did not know where Mr. D. W. Riley was.

I know that my father & Brother have offered to do the fair thing for you people. As to my Springfield property, it is sold for lots more than Mr. Riley thought it was worth.

Now we have plenty of money & property & if we have to give money we will give it to lawyers. See.

Mr. Riley offered me territory on fence staple with out first filing copy in County seat.

I will enclose a letter from Mr. C. A. Snow & Co., in case Mr. D. W. Riley wants to get his fence staple made it might be of some value to him.

Yours truly, W. B. ALLEN.

Redirect examination by S. L. RYAN:

Q. Did your father and your brother authorize you to write that letter?

A. They did not.

Objected to by the plaintiff as immaterial. Objection over-ruled, plaintiff excepting.

Q. I will ask you if about the time or just before that letter was written if there wasn't an offer between Mr. Riley and your brother and your father with reference to trading property for this territory back in Kentucky and Tennessee?

A. There was.

Objected to by the plaintiff as incompetent, irrelevant, immaterial, and it isn't shown that he was present. Objection sustained, and the answer ordered stricken out, and the jury are instructed to disregard it. Defendants excepting.

Q. I will ask you if that letter didn't reply to some demands to compromise or some threats on the part of Mr. Riley to prosecute your father and brother for selling this territory to them without filing in the office of the Clerk of the District Court?

Objected to by the plaintiff as calling for the conclusion of the witness, incompetent, irrelevant and immaterial. Objection sustained, defendants excepting.

Q. I will ask you if you know whether there had been threats made on the part of Mr. Riley and Mrs. Riley to prosecute your father and brother before this letter was written?

Objected to by the plaintiff as incompetent, irrelevant and immaterial. Objection sustained, defendants excepting.

Q. I show you letter written by Mrs. Riley dated October 1st, 1901, and ask you if you had ever seen that letter when you wrote the one there?

A. Yes sir.

Q. Was you absent—Was your father absent at that time from his home?

A. I couldn't state; I think he was at home.

Q. I call your attention *in* this letter in which you say that Mr. Robinson says you know where Mr. Riley is—Withdrawn. Why was that inserted in there, about your property being disposed of at a certain place?

Objected to by the plaintiff as incompetent, irrelevant and immaterial. Objection sustained, defendants excepting.

Q. "As to my Springfield property, it is sold for lots more than Mr. Riley thought it was worth." I will ask you if that didn't refer to some talk of trading back this territory for that property?

Objected to by the plaintiff as incompetent, irrelevant and immaterial. Objection sustained, defendants excepting.

96 E. L. ALLEN being recalled for the defendants, testified as follows:

Direct examination by S. L. RYAN:

Q. At the time that this trade took place down there, when this territory of Kentucky and Tennessee was transferred, I will ask you if you were aware of this statute that was passed in 1889, by which you were required to file copies of the patent, etc.?

Objected to by the plaintiff as incompetent, immaterial, and he is presumed to know the law. Objection over-ruled, plaintiff excepting.

Cross-examination by W. F. MEANS:

Q. How long had you been in the patent right business?
A. I commenced working for father the 5th day of July, 3 years ago last July; I had assisted him at one other time for a spell, when I was living in Seneca, some 15 years ago.
Q. Didn't you have letters or instructions from this firm of Mumm Co.?

Objected to by the defendants as not cross examination. Objection over-ruled, defendants excepting.

A. I think not.
Q. Didn't you claim at that time, and still claim that this law was unconstitutional?

Objected to by the defendants as immaterial and not cross examination.

A. I had heard that it was unconstitutional; that there was such a law some places, and it was unconstitutional.
Q. You had heard that?
A. Yes sir.
Q. At that time?
A. Yes sir.
Q. Did you examine the Statutes, at any time, of Kansas, to see if one existed here?
A. No sir.
Q. You heard if there was such a law it was unconstitutional?
A. Yes sir.

Q. I will ask you if you ever filed copies of your letters-
97 patent in——
A. I have.
Q. Since then?
A. Yes sir.

Redirect examination by S. L. RYAN:

Q. Been filing them since this matter came up from this transaction?
A. Yes sir.
Q. At the time this trade was made—If these matters with Mumm & Co. didn't come after Mr. Riley began to make a fuss about this, you began to inquire, if your knowledge didn't come then?
A. I have heard of it before.
Q. Had you heard that there was such a law in Kansas before that?
A. I don't know that I had. I heard that some states had such laws.

Recross-examination by W. F. MEANS:

Q. You never inquired about Kansas?
A. No sir.

Defendants rest.

D. W. RILEY being called for the plaintiff in rebuttal, sworn, testified as follows:

Direct examination by W. F. MEANS:

Q. Where do you reside?
A. Le Roy, Kansas.
Q. When did you first see Erasmus W. Allen and E. L. Allen?

Objected to by the defendants, as incompetent, and not rebuttal. Objection over-ruled, defendants excepting.

Q. The latter part of December, 1900, or the first of January 1901.
Q. Did you have any conversation with either of them relative to patent right territory?
A. I did.
Q. Will you state that conversation, give the names of the defendants as you give their conversation.

Objected to by the defendants as incompetent and not rebuttal. Objection over-ruled, defendants excepting.

98 Objected to by the defendants as no time having been fixed. Objection sustained, plaintiff excepting.

Q. Relative to trading or selling you territory in Kansas or any other place, the conversation had in the early part of January.

Objected to by the defendants as incompetent, irrelevant, immaterial, not rebuttal, and no foundation laid for its introduction. Objection over-ruled, defendants excepting.

A. This Erasmus Allen suggested the propriety of selling me—he proposed to sell me territory after having exhibited his machine in washing to Mrs. Riley; I asked him the price of territory, and he said he had been selling Kansas counties——

Objected to by the defendants as not rebuttal. Objection over-ruled, defendants excepting.

—. ——.

A. Mr. Allen said he was selling territory—Erasmus Allen said he was selling territory for his improved washing machine, after he had washed for my wife, at which I was present, I ask him what he was selling territory at and he said——

Objected to by the defendants as being in no way competent. Objection over-ruled, defendants excepting.

—. ——.

A. Erasmus Allen said he was selling territory for his washing machine and wanted to know if I didn't want to purchase territory, and I told him that I didn't think that I did, but if I had some thing that I could exchange for territory that I would take a few Kansas Counties, and I inquired of him what territory there was left in Kansas, and he named over several counties; among other- that he named was Coffey county, the county that I live —, and Neosho

county,—Well the four counties lying adjacent to Coffey county was named over, including Coffey county; he said that he had sold counties as high as $200, if I would take 4 counties he would make me a reduction on the four, we discussed the matter at length without coming together; I finally proposed to trade him a piece of Missouri land for these 4 counties, down in Wright County; Mr. Allen said he didn't want any Missouri land, and I told him the trade was off, and they went back home, and came up again in the evening or the next morning, and the old Gentleman, Erasmus W. Allen,
99 said, well, he had concluded not to accept the Missouri land, but his son would give me a deal on the Missouri land.

Q. What beside the Missouri land was spoken of?

Objected to by the defendants as incompetent, calling for the conclusion of the witness. Objection over-ruled, defendants excepting.

A. Some Buffalo Horns, thirty or forty dollars in money; then I was to give him my note for $125.

The defendants move to strike out the answer and each and every part, as immaterial, incompetent and not rebuttal testimony. Objection over-ruled, defendants excepting.

Q. Go ahead and state what was said in relation to the note and in relation to this land, the Coffey county land?

A. Mr. Allen refused to accept a note, and he wanted to know if I had any property, I told him I didn't have any property of my own, if he took my note for any consideration, he took it upon my honor; but in discussing the financial condition of that note, I made mention of the fact that she had 80 acres of land, that they said if she would sign the note they would take my note; they asked her if she would sign it and she said she would, so we made the deal; that is my understanding of the business.

The defendants move to strike out the answer as his understanding. Motion sustained, plaintiffs excepting .

Q. What counties did they convey to you?

Objected to by the defendants as incompetent and not the best evidence. Objection sustained, plaintiff excepting.

Q. State whether you received a deed from them for any territory in Kansas?

A. I did.

Q. Where is that now?

A. I surrendered the deed back to E. L. Allen.

Q. When.

A. When he traded me the Tennessee territory.

Q. Going on now to the transaction in relation to this land, you stated when you was on the stand before that you wrote a letter to E. L. Allen and mailed it to them; state what was in that letter?

100 A. I asked Mr. Allen in the letter, in case Mrs. Riley——

The defendants objects to his stating it in that way as incompetent and not the way to state the contents of a letter.

Q. State what you said in the letter, don't state your conclusions?
A. I asked Mr. Allen in that letter, in case Mrs. Riley took a notion to dispose of her land for territory what kind of a deal they would give, what would — the consideration for a deal of that kind by counties; that was the main contents of the letter.
Q. Did you say anything in that letter about wanting to trade the territory which they had conveyed to you for eastern territory?

Objected to by the defendants as incompetent, leading and calling for the conclusion of the witness. Objection over-ruled, defendants excepting.

A. Not a word.
Q. When did you see either of the Allens next after writing that letter?
A. It wasn't very long. Only a few days until Mr. E. L. Allen came to my house.
Q. State what he said to you then; where did he first see you?
A. He wanted to know if we was still in the notion of trading the land for territory; my reply to him was, that I was surprised——

Objected to by the defendants as incompetent, not rebuttal and part of the plaintiff's case in chief. Objection over-ruled, defendants excepting.

A. I told Mr. Allen I was surprised at seeing him there, I had only sent him the letter as a feeler, to see what might be accomplished; he said the present time was a good time to make a deal as any time; I went in the house and talked with Mr. Allen for some time about the matter, and I reminded him again that the land belonged to Mrs. Riley.

The defendants move to strike that "he reminded him." Motion sustained, plaintiff excepting.

Q. State what was said?
101 A. He said he wanted to go out and look at the land; and I told him the land belonged to Mrs. Riley, but I would go over with him and look at it; we went over and looked over it and came back; and after he urged me and made further propositions to trade, I finally told him——

Objected to by the defendants as no time has been fixed.

By the COURT: The conversation you were just detailing, where did that occur?
A. At my house.
COURT: Who was present?
A. No one but Mr. Allen and myself.

COURT: The objection is over-ruled, defendants excepting.

A. I told Mr. Allen that it wasn't necessary to talk to me any longer about the trade, that so far as I was concerned I didn't own

the land; I was really opposed to Mrs. Riley trading it, but I says, you can talk to her, whatever she says, I suppose will have to go; I says I can't control it; so after that he confined his talk with Mrs. Riley.

Q. What conversation occurred between them?

A. I can't state.

Q. What portion of the time was he in the house talking to her alone?

A. I remember one whole afternoon he was in the house there.

Objected to by the defendants as not rebuttal.

Q. How long was Mr. Allen at your place at that time?

A. He was there three days during the day time.

Q. State now, what was said between you and Mr. Allen in relation to your trading him your Kansas territory for any other territory?

Objected to by the defendants as incompetent, irrelevant, immaterial and not rebuttal.

Objection overruled; defendants excepting.

A. If the Court please, it seems to me necessary that I explain how this territory was exchanged.

Q. State what was said about it?

A. It seems that Mrs. Riley and him had agreed on a trade——

Objected to by the defendants as the conclusion of the wit-
102 ness. Objection sustained, and the answer ordered stricken out, plaintiff excepting.

Q. State what you said to him?

A. I stated to him that I was opposed to the trade contemplated between him and Mrs. Riley for the reason that her territory and mine would be in conflict; and he thinking I would raise the objection——

Objected to by the defendants. Objection sustained, plaintiff excepting.

A. Mr. Allen replied that he could easily overcome that, and I ask him how, and he says, I will give you Tennessee territory for your Kansas territory, so you both can go together; he took the map and we looked over Tennessee and he showed me what division he would make of the state; he said he would give me over half of the state for my 4 counties in Kansas, if I would let the deal go through between him and Mrs. Riley; I finally yielded to it——

The defendants move to strike out "I finally yielded to it." Motion sustained, plaintiff excepting.

Q. What did you say to that when he told you he would give you this territory for the Kansas territory?

A. I finally told him I would do it.

Q. Is this Kansas territory, which you told him you would give him for the Tennessee territory the same territory that was deeded to you in the early part of January by the Allens?

Objected to by the defendants as incompetent, irrelevant, im-

material and not the best evidence. Objection over-ruled, defendants excepting.

A. Yes sir.

Mr. MEANS: I will ask permission of the Court to make an endorsement on this deed from Erasmus W. Allen to D. W. Riley——

Q. Have you got the deed from Mr. Allen to you for the Tennessee territory?

A. I think I gave it to you about 15 minutes ago.

By Mr. MEANS: We ask permission of the Court to make an endorsement on the deed, back of this instrument, which has been introduced and marked Exhibit F, being the deed from
103 Erasmus W. Allen by E. L. Allen to D. W. Riley for the Tennessee territory, for the purpose of surrendering by D. W. Riley all interest he has, if any, in and to this Tennessee territory to Erasmus W. Allen, and tender it and surrender it in court to Mr. Allen.

Objected to by the defendants, as incompetent, irrelevant immaterial and not within the powers of the court.

The plaintiff further asks leave to amend her petition to show the tender and release of this territory back to E. W. Allen.

The COURT: It may be done.

Cross-examination by S. L. RYAN:

Q. Were these conversations or any of them you have spoken of in the presence of your wife?

A. A part of them.

Q. A part of them was in the presence of your wife?

A. I think a part of our conversations was in the presence of Mrs. Riley.

Redirect examination by W. F. MEANS:

The defendants move to strike out the testimony of Mr. Riley and each and every part thereof, excepting the part that occurred between him and Mr. Allen, E. L. Allen, when they were at the wood-pile there, when they were talking about the land, as incompetent, and not rebuttal testimony. Motion overruled, defendants excepting.

Mrs. FRANCES RILEY being called for the plaintiff in rebuttal, testified as follows:

Direct examination by W. F. MEANS:

Q. Mrs. Riley, have you at any time ever claimed an interest in this territory of the eastern half of Tennessee?

Objected to by the defendants, as incompetent, irrelevant,
104 immaterial, not rebuttal and not within the issues as they now stand. Objection sustained, plaintiff excepting.

No Cross Examination.

E. L. ALLEN being called for the plaintiff in rebuttal, testified as follows:

Direct examination by W. F. MEANS:

Q. Mr. Allen have you in your possession or under your control the deed made from Erasmus W. Allen to D. W. Riley for the counties in Kansas?
A. No sir.
Q. Have you ever had it since the day you made this last transaction with Mr. Riley?
A. I didn't have it then.
Q. Was it returned to you?
A. No sir.
Q. To refresh your recollection, I will ask you, if that deed had not been recorded it would be just simply surrendered to you and you wouldn't have to make a new deed back from Mr. Riley to your father, but if it had been recorded, it would be necessary to make a new deed?

Objected to by the defendants as not rebuttal.

A. No sir.
Q. And it was then surrendered to you?
A. It was not surrendered to me.

Mr. E. W. ALLEN being called for the plaintiff in rebuttal, sworn, testified as follows:

Direct examination by W. F. MEANS:

Q. Have you the deed made by you and your son to Mr. D. W. Riley for the territory in Kansas?
A. No sir.
Q. Do you know where it is?
A. No sir.
Q. Is it under your control?
A. No sir.

105 D. W. RILEY being recalled for the plaintiff in rebuttal, testified as follows:

Direct examination by W. F. MEANS:

Q. State if you have searched through your papers for all the papers of every kind and character relating to the transaction with the Allens?
A. Yes sir.
Q. State if you have the deed made from Erasmus W. Allen to you for the Kansas territory?

Objected to by the defendants as incompetent and having been gone over in rebuttal. Objection over-ruled, defendants excepting.

A. I have not.
Q. You may state what the contents of that deed was?

Objected to by the defendants as incompetent, not rebuttal, no foundation laid and not the best evidence. Objection sustained, plaintiff excepting.

Cross-examination by S. L. RYAN:

Q. This deed was recorded in Washington, wasn't it?
A. Yes sir.

The plaintiff rests in rebuttal.

E. W. ALLEN, being called for the defendants in rebuttal, testified as follows:

Direct examination by S. F. NEWLON:

Q. You heard read the letter of W. B. Allen to Mrs. Riley here this afternoon, didn't you?
A. Yes sir.
Q. This is the letter. I will ask you to state if you authorized W. B. Allen to write that letter?
A. No sir.

Objected to by the plaintiff as incompetent, irrelevant, immaterial and not sur-rebuttal.

A. I did not.
106 Q. I will ask you to state if you had any knowledge of his writing it, until you saw it here to-day?

Objected to by the plaintiff for the same reasons as last above. Objection overruled, plaintiff excepting.

A. He told me he had written Mrs. Riley before.
Q. Did he tell you what he had written?
A. No, sir.
Q. How long ago was that that he told you?

Objected to by the plaintiff as immaterial. Objection sustained, defendants excepting.

No cross-examination.

E. L. ALLEN being called for the defendants in rebuttal, testified as follows:

Direct examination by S. F. NEWLON:

Q. You heard read this letter?
A. I did.
Q. I will ask you to state if you authorized W. B. Allen to write it?
A. I did not.

Objected to by the plaintiff as not surrebuttal, incompetent and immaterial.

Q. I will ask you to state if you knew of this letter being written until afterwards?

Objected to by the plaintiff as incompetent, irrelevant and immaterial. Objection over-ruled, plaintiff excepting.

A. He told me he had writen to them.
Q. When did he tell you he had written it.

Objected to by the plaintiff as incompetent, irrelevant and immaterial. Objection sustained, defendants excepting.

Q. Did he tell you what the contents of it was?
A. No, sir.

Defendants rest.

And the above and foregoing is all of the evidence offered and introduced on the trial of said case.
Stenographer's Fees $17.00. Paid by Plaintiffs in error.

07 And after the evidence was all introduced, both parties asked special instructions to be given to the jury, which instructions were in writing and given to the court, and the instructions submitted and asked by defendants were by the court refused, to which refusal and to the refusal to give each of said instructions, the said defendants excepted. The said instructions asked by plaintiff and the instructions submitted and asked by defendants with the refusal of the court to give the same and the exception of the defendants thereto are in words and figures as follows:—

In the Brown County, Kansas, District Court.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Instructions Asked for by Plaintiff.

1. GENTLEMEN OF THE JURY: The Court instructs you that if you believe from the evidence that the defendants in this action sold and transferred to the plaintiff the territory of Kentucky for a certain patent right to a washing machine, without filing the authenticated copies and affidavits required by law in the office of the clerk of the District Court of Coffey County, Kansas, and that such transaction was had in said Coffey County, then said plaintiff is entitled to recover from the defendant- the value of such land less any sum of money she may have received from said defendants in said transaction and your verdict should be for the plaintiff in such amount.

2. Where property or money is received by a person or persons in an illegal transaction, the persons connected with the reception of such money or property are liable to the person from whom the same was received for the value thereof; and it makes no difference whether such persons were acting as principals or agents, and in this case the fact that E. L. Allen purported to act as the agent of Erasmus W. Allen will not prevent a recovery against him in case you should

find for plaintiff and your verdict should be against both
108 Erasmus W. Allen and E. L. Allen for such amount as you may find for the plaintiff, in case you do so find.

3. The defendants have interposed in this action as a defense that the plaintiff and her husband, D. W. Riley were co-partners jointly interested in the purchase of the territory of Kentucky for said patent and that the said D. W. Riley illegally sold and transferred to the defendants certain territory in Kansas for said patent right and that the plaintiff was a co-partner of said D. W. Riley in said deal.

You are further instructed that before the defendants can avoid a recovery against them upon that ground, they must prove by a preponderance of the evidence that a co-partnership relation existed between the said Francis J. Riley and D. W. Riley in relation to the said conveyance by the said D. W. Riley and that the said palintiff assisted in making the said trade between the said D. W. Riley and the defendants. And it is not enough for the defendants to show that the said D. W. Riley was consulted in relation to the conveyance of the said eighty acres of land for the territory of Kentucky for as the husband of plaintiff he had such an interest in said lands that no conveyance could be made thereof without his consent. Neither can the partnership relation be presumed from the fact that the said D. W. Riley may have acted as the agent for the said plaintiff in relation to the sale of said land or the purchase of said territory of Kentucky or that he has acted as her agent in the prosecution of this action or in attempting to procure a settlement before the beginning of the same.

4. You are further instructed that if the territory in Kansas which was conveyed by the said D. W. Riley to the said defendants or either of them was territory which the said Erasmus W. Allen had previously deeded to the said D. W. Riley without filing copies of letters patent and affidavits as required by law then the said defendants cannot take advantage of their own original wrong and the fact that such conveyance may have been made by the said D. W. Riley to the said defendants will not constitute a defense to plaintiff's right of recovery and your verdict must be *in* for plaintiff.

5. Under the law and the evidence in this case your verdict must be for plaintiff and you will assess the amount of her recovery at the value of the land at the time of the conveyance less the sum of $100.

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W. F. MEANS,
W. F. SHALE,
Att'ys for Pl'ff.

Filed February 11, 1903.

R. W. HICKS,
Clerk of the District Court.

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Instructions Submitted and Asked on the Part of Defendants.

(1.) The Court instructs the Jury that under the law and evidence in this case, plaintiff is not entitled to recover against said defendants and your verdict will therefore be in favor of said defendants.

Refused and excepted to by defendants.

W. I. STUART,
Dist. Judge.

(2.) The Jury are further instructed that it is admitted by the parties to this action that neither plaintiff nor her said husband, D. W. Riley nor either of said defendants have complied with the Statutes of the State of Kansas, requiring a vendor, barterer or seller of patent rights within any County of the State of Kansas, to file with the Clerk of the District Court of such County, copies of the Letters-Patent, duly authenticated, and at the same time swearing or affirming before the said Clerk that such patents were genuine and had not been revoked or annulled and that they had authority to sell the right so patented and requiring a copy of such affidavit to be filed in the office of such clerk.

Refused, and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

(3.) The Jury are further instructed, that if they believe from the evidence said plaintiff together with her husband, D. W. Riley sold or traded to the defendants or either of them in consideration of said patent right for the territory of the State of Kentucky and a part of Tennessee, the land described in plaintiff's petition and of certain territory in the State of Kansas and the sale or trade *are* part of one and the same transaction; plaintiff and her said husband were in equal wrong and cannot recover in this action.

Refused and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

110 (4.) The Jury are further instructed that where parties are in equal wrong and have engaged in contracts or transactions forbidden by the laws or contracts that are unlawful the Courts will not lend themselves to give relief to either party; but will leave the parties where they are found; and if you believe from the evidence in this case, that the parties engaged in said contract on both sides had and failed to comply with the Statutes of the State of Kansas with reference to patent rights; then it is your duty

to leave the parties in the condition they placed themselves by their contract.

Refused and excepted to by Defendants.

WM. I. STUART,
Dist. Judge.

(5.) The Jury are further instructed that if they believe from the evidence, that said defendant E. L. Allen was acting as agent for said defendant Erasmus W. Allen in said transaction or as his attorney-in-fact and if you find from the evidence the fact was so known to plaintiff or her agent duly authorized then, in that event, plaintiff cannot recover in this action as against said defendant, E. L. Allen.

Refused and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

(6.) The Jury are further instructed that plaintiff cannot recover in this action in any event more than — dollars the amount set out and prayed for in their amended petition, less $100.00, the amount admitted by the pleadings to have been paid and received by said plaintiff.

Refused and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

(7.) The Jury are further instructed that the pleadings in this case admit that said D. W. Riley, husband of plaintiff, was the agent of plaintiff, but deny the co-partnership set out and alleged in the answer of defendants. The amended petition also alleges, and it is an admission on the part of the plaintiff that $100.00 in cash was paid by defendant- and received by plaintiff, and she is bound by such admission, and if you find from the evidence, under the instructions of the Court, that plaintiff is entitled to recover, you will deduct said $100 from what you find to be the value of the land.

Refused and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

111 (8.) The Jury are further instructed that before plaintiff can recover in this action they must believe from the evidence that the plaintiff has placed, or offered to place defendants in as good shape as she found them; she must show by competent evidence that she has deeded or tendered a deed or other conveyance of the territory of Kentucky, and that at the time of so deeding or tendering a deed the title to said patent still remained in her or that she had not conveyed, mortgaged or otherwise disposed of said patent, and was at such time in a position to reconvey the patent to said territory to defendant, Erasmus W. Allen as fully as when conveyed to her.

Refused and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

(9.) The Jury are further instructed that unless they believe from the evidence that before the commencement of this action plaintiff tendered back to defendant, Erasmus W. Allen, a conveyance of said patent right for the State of Kentucky and that she then had the title at least to the same extent as conveyed to her, then plaintiff cannot recover in this action.

Refused and excepted to by defendant.

WM. I. STUART,
Dist. Judge.

(10.) The Jury are further instructed that plaintiff cannot recover against defendants herein unless the Jury find from the evidence that the $100 in cash paid by defendants to plaintiff was tendered back to defendants before the commencement of this action.

Refused and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

(11.) The Jury are further instructed that if they believe from the evidence that the sale or trade, for the territory of the State of Kentucky and a part of the State of Tennessee, and the land and $100 was a part of one and the same transaction then plaintiff cannot recover herein unless she tenders or causes to be tendered back to said defendant, Erasmus W. Allen, all that was received in said transaction, to-wit: A deed to the territory of Kentucky, and said part of Tennessee and said $100 in cash.

Refused and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

112 (12.) The Jury are further instructed that if they believe from the evidence that the trade for said territory of Kentucky and said part of Tennessee and for the land and $100 in cash and the territory in Kansas owned by said D. W. Riley was a part of one transaction as a whole then plaintiff cannot have the transaction set aside in part, and keep and retain either by herself or husband, the advantage of the other part.

Refused and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

RYAN & RYAN AND
SAMPLE F. NEWLON,
Att'ys for Defendants.

Filed February 11, 1903.
R. W. HICKS,
Clerk of the District Court.

Thereupon the court instructed the jury in writing as to the law of the case, to the giving of said instructions and the giving of each and every thereof, the said defendants excepted. The said instructions so given, with the exceptions of the defendants thereto, are in words and figures as follows:—

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Instructions.

GENTLEMEN OF THE JURY: As to the law of this case the Court instructs you as follows:

First.

This is an action brought by the plaintiff, Francis J. Riley, against the defendants, Erasmus W. Allen and E. L. Allen, to recover the sum of $140.00, as the value of certain real-estate, situated in Coffey County, Kansas, and as a reason for said recovery, said plaintiff alleges, in her petition filed herein that on the — day of January 1901, said plaintiff was a resident of Coffey County, in the State of Kansas, and that at said time and place, said defendants offered and agreed to barter and sell a certain patent right for a washing machine for the territory of the State of Kentucky for the sum
113 of $5000; and that on the 30th day of January 1901, in said county and state, the said Erasmus W. Allen by the said E. L. Allen, purporting to act as his agent, executed and delivered to the plaintiff under the name of F. J. Riley, his certain instrument of writing, whereby he purported to convey to said plaintiff the said patent right to the territory of the State of Kentucky, for the said sum of $5000. That in consideration of the sale and conveyance of said patent right and the payment of the sum of $100.00 made by said defendants to said plaintiff, said plaintiff, together with her said husband, D. W. Riley, agreed to and did convey to said defendant E. L. Allen, the eighty acres of land in Coffey County, Kansas, being the North half of the South East Quarter in Section 35, Township 22, of Range 16; that said land was the property of said plaintiff, and stood upon the records in said County, in her name, and was conveyed to the said E. L. Allen, at the request of said defendants, and that said lands was of the actual market value of $1500; that the defendants entered into the possession of said land and immediately thereafter sold and conveyed the same and have now no interest or control thereof.

And plaintiff further alleges that said defendants had not filed with the Clerk of the District Court, in Coffey County or else-where in the State of Kansas, a copy of the Letters Patent, duly authenticated, for such alleged invention, and did not swear or affirm, before such Clerk to an affidavit that such Letters Patent were genuine and had not been revoked or annulled or that they or either of them had full authority to sell or barter such patent right, and did not set forth in an affidavit the name, age, occupation and residence of said defendants, or either of them, and did not file a copy of such affidavit with the Clerk of the District Court in said Coffey County, and had

t in any manner complied with or attempted to comply with the
ws of the State of Kansas, in relation to the sale or the offering for
le of a patent right in said State. That by reason thereof the con-
yance and sale of said patent right to plaintiff by defendants for
e said territory of Kentucky was in violation of the law and was
egal and void, which fact was well known by defendants and un-
own to the plaintiff. And plaintiff further alleges that she has
ered to surrender to the defendants the conveyance of said alleged
tent right, and to release to them, whatever right, if any, may have
been passed to her by said alleged conveyance, and comes now
into Court and makes offer to surrender and release to said
defendants all right or semblance of right she may have in
d patent-right for the said territory of Kentucky, and plaintiff
eges that the defendants have refused and neglected to pay said
m of $1400 the alleged value of said land, or any part thereof to
d plaintiff.

As a defense to the action of said plaintiff, the defendants in their
swer filed herein, have made a general denial, to all of the material
egations of plaintiff's petition, except, such as are expressly admit-
d in said answer; and in addition thereto, said defendants allege
at the defendant E. L. Allen, acted as the agent and attorney in
t for said defendant Erasmus W. Allen in said alleged transaction,
d acted only in that capacity. Said defendants further allege, that
the 21st day of June 1898, the United States of America duly
ued Letters Patent to said defendant, Erasmus W. Allen, for im-
ovements on a washing machine, and which is the same patent
ght described in plaintiff's amended petition, and that said defend-
t, Erasmus W. Allen, has ever since been the patentee and owner
said patent right on said washing machine, and has been the
ner of the territory of the United States of America for said patent
ght, except a small portion thereof, and was, at said time alleged
said amended petition, the owner of the territory of the State of
ntucky and the State of Tennessee, with the lawful right to sell
transfer the same, under the Constitution and Laws of the United
ates, notwithstanding the provisions of the laws of the State of
nsas, and the defendants allege that said Statute of the State of
nsas is unconstitutional and is in contravention of Federal Con-
tution and Statutes or Laws of the United States.

And said defendants for a further defense, to plaintiff's said action
eged, that said plaintiff and her said husband D. W. Riley, who
d defendants allege, was, at the time of said alleged transaction,
ting with and for and was then and there plaintiff's duly author-
d and acting agent and copartner and had a point interest with
d plaintiff in said transaction and in the purchase of said patent
ght and said territory; and defendants allege that, at the time of
d alleged transaction and said sale and as a part of one and the
same transaction, said defendant Erasmus W. Allen through
his agent and attorney in fact, said E. L. Allen, sold to said
plaintiff and her said husband, agent and co-partner, D. W.
ley, the said patent right for the said territory of the State of Ken-
cky and the East half of the State of Tennessee; that there was no

agreement as to the money valuation or consideration to be paid for said patent right for any particular part of said territory, but that said plaintiff and her husband, agent and co-partner, then and there owned the 80 acres of land, above described, and owned the patent right for said washing machine for the territory of the Counties of Butler, Wilson, Coffey and Osage in the State of Kansas, except a small part of the territory of said Osage County, and said plaintiff and her said husband, agent and co-partner, then and there agreed to sell, and did sell and deed to said defendant Erasmus W. Allen, said 80 acres of land and said patent right in said territory in Kansas, and in consideration thereof, said defendant, Erasmus W. Allen, conveyed to said plaintiff and said D. W. Riley, the said territory of Kentucky and the East half of the State of Tennessee, and in addition thereto paid the sum of $100.00 in cash; that the deed from said plaintiff and D. W. Riley to said 80 acre tract of land in Coffey County, Kansas to Erasmus W. Allen, was taken in the name of E. L. Allen for the use and benefit of Erasmus W. Allen, and defendants allege that at the time of said transaction, at the request of said plaintiff and her said husband, D. W. Riley, said defendants deeded the territory of the State of Kentucky to said plaintiff and the territory for the East half of the state of Tennessee to said D. W. Riley. And said defendants further allege, that, at the time of said transaction, said plaintiff nor her said husband, agent and co-partner, D. W. Riley, had filed or caused to be filed with the Clerk of the District Court of said Coffey County, where said transaction took place, or elsewhere in said State of Kansas, a copy of the Letters Patent duly authenticated, for such an alleged invention and did not swear or affirm before such Clerk to an affidavit that such Letters Patent were genuine and had not been revoked or annulled or that they or either of them had full authority to sell or barter such patent right, and did not set forth in an affidavit the name age, occupation or residence of said plaintiff or said D. W. Riley or either of them, and did not fine a copy of such affidavit with the said clerk of the District Court, of said Coffey County, and had not in
116 any manner complied or attempted to comply with the laws of the State of Kansas, relative to the sale, barter or offering for sale or barter of patent rights in said State.

Said plaintiff has filed a verified general denial to the answer of said defendants, and denies under oath, the co-partnership alleged and set forth in defendants' said answer.

Given and excepted to by the defendants.

WM. I. STUART,
Dist. Judge.

Second.

The burden of proof is upon the plaintiff in this case, to prove her case by a preponderance of the evidence; that is, to prove, that for and in consideration alone of the $100.00 paid to her and the conveyance to her of the territory of Kentucky to the patent right in question, by the defendants, she conveyed to defendants the 80 acre tract of land in Coffey County, Kansas, and to prove the value of

said land at the time of the conveyance thereof, and to prove that she now surrenders and offers to release to said defendants whatever right which may have passed to her by said alleged conveyance of the territory of Kentucky.

And the burden of proof is on the defendants, to prove that said plaintiff and her said husband, D. W. Riley, were co-partners in said transaction. By a preponderance of the evidence is not meant the greater number of witnesses testifying on a side but that of the greatest weight and which convinces and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

Given and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

Third.

Section 1356 of the General Statutes of 1901, of this state provides that:

"It shall be unlawful for any person to sell or barter or offer to sell or barter any patent right, or any right which such person shall allege to be a patent right, in any county within this state, without first filing with the Clerk of the District Court of such County, copies of the Letters Patent duly authenticated and at the same time swearing or affirming to an affidavit before such clerk that such letters patent are genuine and have not been revoked or annulled, and that he has full authority to sell or barter the right so patented, which affidavit shall also set forth his name, age, occupation and residence, and if an agent the name, occupation and residence; and if an agent the name, occupation and residence of his principal. A copy of this affidavit shall be filed in the office of said Clerk and said Clerk shall give a copy of said affidavit to the applicant, who shall exhibit the same to any person on demand."

Given and excepted — by *by* defendants.

WM. I. STUART,
Dist. Judge.

117 Fourth.

It is admitted by the pleadings in this case, that said D. W. Riley acted as the agent of the plaintiff, Francis J. Riley, in all things in which he had anything to do, concerning the transaction or trade of said land for said patent right; and it has been admitted by the parties in open Court that said defendants, or either of them or any person for them, at the time when said trade was made of said land for said patent right, had not filed with the Clerk of the District Court of Coffey County, Kansas the place where said trade was made, copies of the Letters patent in question, duly authenticated, and had not at said time sworn, or affirmed to an affidavit before such Clerk that said Letters Patent were genuine and had not been revoked or annulled and that they or either of them had full authority to sell or barter the right so patented, and had not yet set forth in an affidavit the name, age, occupation and residence of said defendants, or either of them and had not filed a copy of such

affidavit with the Clerk of said district Court of Coffey County, Kansas and had not in any manner complied with or attempted to comply with the laws of the State of Kansas, in relation to the sale or offering for sale of a patent right in said state; and it is further admitted by the parties in open Court, that said plaintiff or her husband D. W. Riley, at the time of the making of said contract or trade in Coffey County, Kansas, had not filed with the Clerk of the district Court of Coffey County, copies of any Letters Patent, duly authenticated, and had not at said time sworn or affirmed to an affidavit before such Clerk that such Letters Patent were genuine and had not been revoked or annulled, and that they or either of them had full authority to sell or barter the right so patented and had not set forth in an affidavit the names, age, occupation and residence of said plaintiff or said D. W. Riley or either of them and had not filed a copy of such affidavit with the Clerk of the District Court of said Coffey County and had not in any manner complied or attempted to comply with the laws of the State of Kansas, in relation to the sale or offering for sale of a patent right in said State; it is also admitted by the pleadings and by the parties to this suit that at the time of said attempted trade of said land for said patent right, that said defendants paid to said plaintiff the sum of $100.00.

118 Given and excepted to by the defendants.

WM. I. STUART,
Dist. Judge.

Fifth.

If you believe from the evidence in this case, that the defendants in this action sold and transferred to the plaintiff Francis J. Riley, the territory of Kentucky for a certain patent right to a washing machine, and that such transaction was had and made in said Coffey County, Kansas, and that the inducement on the part of the said plaintiff was the conveyance of said land alone for said territory of Kentucky and that the inducement on the part of said defendants was the conveyance of said territory of Kentucky and the payment of $100.00 alone, for said land, and that the conveyance by said defendants to said D. W. Riley of part of the territory of the State of Tennessee, and the conveyance by said D. W. Riley to said defendants to said D. W. Riley of part of the territory of the State of Tennessee, and the conveyance by said D. W. Riley to said defendants of certain territory in the State of Kansas, were no part of the inducement which caused or actuated said trade between said plaintiff and said defendants, then your verdict must be for the plaintiff, and if you find for the plaintiff in this action, your verdict must be for such sum, as you may believe from the evidence that the 80 acre tract of land in Coffey County Kansas was reasonably worth on the market, less the sum of $100 which it is admitted that said defendants had already paid to said plaintiff, but in no event, under

the pleadings of this case can the plaintiff recover the sum in excess of $1400.

Given and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

Sixth.

If you believe from the evidence in this case, that said plaintiff together with said D. W. Riley, sold or traded to the defendants the 80 acre tract of land in Coffey County, Kansas, and certain territory in the State of Kansas for a patent right and in consideration therefor, said defendants or either of them conveyed to the said plaintiff and said D. W. Riley the territory of Kentucky and the East half of the territory of Tennessee for a patent right, and in addition paid said plaintiff the sum of $100 and that such sale or trade and such transactions were all mutual inducements and a part of one an- the same transaction then, under the pleadings and the evidence in this case plaintiff cannot recover and your verdict must be for the defendants.

Given and excepted to by defendants.

WM. I. STUART,
Dist. Judge.

119 Seventh.

Where property or money is received by a person or persons in an illegal transaction, and the persons connected with the receipt of such money or property are liable to the person from whom the same was received for the value thereof, and it makes no difference whether such persons were acting as principals or agents, and in this case, the fact that E. L. Allen purported to act as agent of Erasmus W. Allen will not prevent a recovery against him in case you should find for the plaintiff; and if you should find for the plaintiff your verdict should be against both Erasmus W. Allen and E. L. Allen for such amount as you may find from the evidence and under the instructions of the Court herein, that said plaintiff is entitled to recover.

Given and excepted to by the defendants.

WM. I. STUART,
Dist. Judge.

Eighth.

You are the exclusive judges of all questions of fact, of the weight of the evidence and of the credibility of the witnesses and you may judge of this from the appearance and demeanor of the witness on the stand, his or her fairness and candor or the want of it, and the interest or the want of it each witness may have in the result of the suit.

And if you find from the evidence, that any witness in this case has willfully or corruptly testified falsely to any material fact in the case, then it is your province to determine how much or whether the whole of his or her testimony should be disregarded.

Forms of verdict will be furnished you suitable for finding for the plaintiff and also suitable for finding for the defendant.

After Counsel shall close their arguments, the case will be submitted to you in full confidence of a fair and impartial discharge of your duties as jurors in this case.

Given and excepted to by defendants.

WM. I. STUART,
Dist. Judge.
W. I. STUART,
Dist. Judge.

Filed February 11, 1903.
R. W. HICKS,
Clerk of the District Court.

And the above and foregoing are all instructions given by the court.

120 And thereafter and before the jury retired to deliberate the said defendants submitted certain special questions and requested answers thereto by the jury. And thereupon the jury retired to deliberate on their verdict and to answer said questions, and thereafter returned into open court their verdict and said special questions with their answers thereto, which said verdict and said special questions and answers thereto are embodied in the order and final judgment of said court and the journal entry thereof, and are found in this record on pages 146 to 147 inclusive.

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Particular Questions of Fact Submitted and Asked on the Part of Defendants.

Q. 1. Was the husband of plaintiff, D. W. Riley, the agent of plaintiff and did he act for her in the transaction in question in this case?

Answer. No.

Q. 2. At the time — the transaction set out and referred to in plaintiff's amended petition did plaintiff and her said husband trade to defendant, Erasmus W. Allen, through his agent and attorney-in-fact, E. L. Allen, the land described in petition and the patent right to certain territory in Kansas for the patent right for said washing machine for the territory of Kentucky and a part of Tennessee and $100.

Answer. No.

Q. 3. If the last question is answered in the affirmative, was said trade or exchange a part of one and the same transaction?

Answer. ——.

Q. 4. If question two is answered in the negative, what was the consideration for patent to said territory of Kentucky?

Answer. Said eighty acres of land—less $100.00.

Q. 5. At the time of said transaction was said defendant E. L. Allen, agent and attorney-in-fact of said defendant, Erasmus W. Allen and did he act in that capacity alone?

Answer. No.

121 Q. 6. Did said plaintiff tender back to Erasmus W. Allen a deed for said patent right for said territory of Kentucky before the commencement of this action?

Answer. No.

Q. 7. If the last question is answered in the affirmative, when and where was such tender made?

Answer. ——.

Q. 8. Did said plaintiff tender back to said defendant, Erasmus W. Allen or said defendant, E. L. Allen said $100 cash before the commencement of this action?

Answer. No.

Q. 9. If the last question is answered in the affirmative, when and where was such tender made?

Answer. ——.

Q. 10. Did defendants pay plaintiff $100 in cash as a part of the consideration of said trade or transaction?

Answer. Yes.

Q. 11. Was the transfer, or sale of the territory of Kentucky and a part of Tennessee and of the territory in Kansas for said patent in the name of said D. W. Riley, made at the same time and a part of the same transaction?

Answer. No.

PERRY F. HART, *Foreman.*

Filed February 11, 1903.
R. W. HICKS,
Clerk of the District Court.

And thereafter and within three days after the bringing in of said verdict by the said jury and at the same term of court, the said defendants filed in said court their motion for a new trial, which said motion is in the following page of this record, and the order and judgment of the court overruling said motion and refusing to grant a new trial is found in the final judgment of this court herein and the journal entry thereof, and is copied in this record at page- 154 and 155.

122 In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Motion for a New Trial.

Comes now the above named defendants and move the court to set aside the general verdict and special findings of the jury made and returned herein, and to grant defendants a new trial and as ground therefor defendants allege:

1. Irregularity in the proceedings of the Court by which defendants were prevented from having a fair trial.
2. Irregularity of the Jury by which defendants *was* prevented from having a fair trial.
3. Misconduct of the jury.
4. Accident and surprise which ordinary prudence could not guard against.
5. The verdict of the jury was not sustained by sufficient evidence.
6. The special findings of the Jury and the answers thereto were not sustained by sufficient evidence.
7. The verdict of the Jury is contrary to law.
8. Newly discovered evidence material for defendants which they could not with reasonable diligence have discovered and produced at the trial.
9. Errors of law occurring at the trial and excepted to by said defendants.
10. The Court erred in not sustaining the demurrer of defendants to the evidence of plaintiff.
11. The Court errred in not instructing the Jury that the Statute or laws set out and referred to in plaintiff's amended petition were unconstitutional and in contravention of the constitution of the United States and the Federal laws.
12. The Court erred in not instructing the Jury to find a verdict in favor of defendants.

Affidavits, oral and record evidence will be used on the hearing of this motion.

S. F. NEWLON,
C. W. REEDER,
RYAN & RYAN,
Att'ys for Defendants.

Filed February 13, 1903.
R. W. HICKS,
Clerk of the District Court.

123 And after said final judgment was rendered by said court in which the costs of said action were by the court adjudged against defendants, said defendants filed in said court their motion to retax said costs against plaintiffs for the reason therein contained,

which motion was by the court overruled. Said motion is copied hereafter and the order of the court thereon is on page —— of this record.

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Motion to Retax Costs.

Comes now the above named defendants after judgment was rendered against them herein, and the costs taxed against them in said action, and move the Court to set aside that part of said judgment taxing and adjud-ing said costs against them or either of them, and to retax the costs of this action against plaintiff.

S. F. NEWLON,
C. W. REEDER,
RYAN & RYAN,
Att'ys for Defendants.

Filed February 17, 1903.
R. W. HICKS,
Clerk of the District Court.

The order of the court containing the final judgment thereof, the order overruling the motion for a new trial, and the overruling of the motion of defendants to retax the costs of said case, and the journal entry of said judgment and orders, *is* in words and figures as follows:—

124 In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Journal Entry.

Now on this 10th day of February 1903, the above entitled action coming on for trial in its regular order on the Docket the plaintiff appears in person and with her attorneys W. F. Means and W. F. Shale, and the defendants appear in person and with their attorneys, Sample F. Newlon and Ryan & Ryan and thereon came a Jury as follows, to-wit:

S. A. Holcomb, W. O. Oliver, E. H. Germann, S. Klinefelter, M. A. Murphy, Seth Stoffer, Perry Hart, C. B. Carter, W. O. Armstrong, E. D. Crouch, Henry Schaible, and W. A. Chase twelve good and lawful men from the body of the County who are duly empaneled and sworn to try said cause and a true verdict rendered according

to law and evidence, and thereon the trial of said cause is proceeded with until the hour of adjournment, at which time the further hearing thereof is adjourned until the 11th day of February 1903, at 8:30 A. M.

And now on this 11th day of February, 1903, said parties appear as on yesterday and thereon the trial of said cause is proceeded with and each party having rested his case and the Jury having been instructed by the Court and having heard the argument of Counsel, retire in charge of a sworn officer to deliberate upon their verdict and special findings of fact and afterwards on the same day the Jury returned into open Court with their verdict and special findings of fact in writing signed by their foreman in words and figures to-wit:

In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

Verdict.

We, the Jury, duly empanelled and sworn in the above entitled case do on our oaths find for the plaintiff and assess the amount of her recovery at $1250.00.

PERRY x HART,
Foreman.

Filed Feb. 11, 1903,
R. W. HICKS,
Clerk of Dist. Court.

And now on this 13th day of February, 1903, said plaintiff appears by her attorneys W. F. Shale and W. F. Means and the defendants by their attorneys Sample F. Newlon and Ryan & Ryan and thereon came on for hearing a motion of the defendant- to set aside the verdict of the Jury in said action and for a new trial therein and the Court having heard the argument of Counsel and being fully advised in the premises doth over-rule said motion, the defendants duly excepting thereto.

And thereon it is considered, ordered and adjudged by the Court that the plaintiff have and recover of and from the said defendants Erasmus W. Allen and E. L. Allen the sum of $1250 found due by the verdict of the Jury and the said judgment bear interest from this date at the rate of 6% (per cent.) and *and* for costs of this
125 action taxed at $—— the defendants duly excepting to said judgment and to every part thereof.

And thereon came on for hearing the motion of the defendants to retax the costs in said action and adjudge the same against plaintiff and the Court having heard the argument of Counsel and being fully advised in the premises doth overrule the same the defendants duly excepting thereto.

And thereon for good cause shown, the said defendants are allowed sixty days in which to make and serve a case made for the Supreme Court and the plaintiff is allowed twenty days thereafter in which to suggest amendments; said cause to be settled on five days' notice in writing by either party and thereon it is ordered that execution be stayed for ninety days.

W. I. STUART, *Judge.*

O. K.
RYAN & RYAN.
MEANS.

And the above and foregoing contains all the evidence, instructions asked and given all the pleadings, decisions and judgments of the court motions and final judgment and journal entry thereof.

The foregoing is made and served as a full true and correct case made of the foregoing action, and contains all the pleadings, motions, orders, judgments and decisions of the court, the demurrers to the pleadings and to the evidence, the instructions submitted and asked by both parties and the instructions given by the court, the evidence offered and received and offered and refused together with the rulings of the court thereon and the exceptions thereto, and the final judgment of the court, so as to present all the errors of said District Court complained of herein.

S. F. NEWLON,
C. W. REEDER,
RYAN & RYAN,
Att'ys for Defendants.

Service of the above and foregoing Case-Made is acknowledged to have been made on us this 11th day of April, 1903.

W. F. MEANS AND
W. F. SHALE,
Att'ys for Plaintiff.

126 FRANCIS J. RILEY, Plaintiff,
vs.
E. L. ALLEN and WALTER B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Defendants.

Now on this 1st day of February, 1904, of the February term of the district court, comes on for hearing the motion of the defendant, E. L. Allen in the above entitled cause to revive the judgment and action in said cause in the name of the administrator of the defendant, Erasmus W. Allen deceased, Wallace B. Allen, the plaintiff appearing *ny* her attorneys W. F. Means and W. F. Shale, and the said defendant, E. L. Allen, and the said Wallace B. Allen, administrator of the estate of Erasmus W. Allen, deceased, appeared by Ryan & Ryan and Sample F. Newlon, their attorneys.

And it appearing that said cause is in course of preparation for the Supreme Court, and it being suggested to the court that said defend-

ant, Erasmus W. Allen, had deceased, and that Wallace B. Allen was his duly appointed and qualified administrator, and the said plaintiff by her said attorneys W. F. Means, and W. F. Shale, waiving any notice of said revivor, and agreeing that said judgment and action be revived in the name of Wallace B. Allen, as administrator of the estate of Erasmus W. Allen, deceased.

It is therefore considered, ordered and adjudged that said motion be sustained, and that said above entitled cause of action and judgment be and hereby is revived in the name of Wallace B. Allen, as administrator of the estate of Erasmus W. Allen, deceased.

WILLIAM I. STUART,
District Judge.

Filed Feb'y 1st, 1904.
R. A. HICKS,
Clerk Dist. Court.

127 In the District Court of Brown County, Kansas.

FRANCIS J. RILEY, Plaintiff,
vs.
WALLACE B. ALLEN, Administrator of the Estate of ERASMUS W. ALLEN and E. L. ALLEN, Defendants.

STATE OF KANSAS, *Doniphan County, ss:*

I, Wm. I. Stuart, the undersigned, Judge of the District Court of the 22nd Judicial District of the state of Kansas, sitting within and for Brown County, Kansas, hereby certify that the foregoing was presented to me as a Case Made in the action above entitled; that the said plaintiff appeared by W. F. Means her attorney and said defendants appeared by their attorneys, Sample Newlon and S. L. Ryan, and the suggestions of amendment offered by plaintiff to this Case Made having been settled and allowed and I now settle and sign the same as a true and correct Case Made, and direct that it be attested and filed by the Clerk of said Court.

Witness my hand at Hiawatha, in Brown County, Kansas, this 8th day of Feb'y, 1904.

[SEAL.]

WM. I. STUART,
District Judge.

Attested this 11th day of April, 1903.
R. W. HICKS,
Clerk of the District Court of Brown County, Kansas.

Filed this 11, day of February 1904.
R. W. HICKS,
Clerk of the District Court of Brown County, Kansas.

Filed Feb. 11, 1904,

D. A. VALENTINE,
Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

ERASMUS W. ALLEN and E. L. ALLEN, Plaintiffs in Error,
vs.
FRANCIS J. RILEY, Defendant in Error.

Waiver of Summons in Error and Service Thereof.

The defendant in error, Francis J. Riley, hereby waives the issuance and service of summons in error, in the above entitled cause and hereby enters her appearance herein.

Dated at Hiawatha, Kansas, this 8th day of Feb. 1904.

W. F. MEANS AND
W. F. SHALE,
Att'ys for Defendant in Error, Francis J. Riley.

Filed Feb. 11, 1904.
D. A. VALENTINE,
[SEAL.] *Clerk Supreme Court.*

128 Be it further remembered, that afterwards on the 3rd day of April, 1905, the same being one of the regular judicial days of the January, 1905, term of the supreme court of the state of Kansas, said court being in session at its court-room in the city of Topeka, the following proceeding, among others, was had and remains of record, to-wit:—

129 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN ET AL., Adm'rs, Etc., Plaintiffs in Error,
vs.
FRANCES J. RILEY, Defendant in Error.

Journal Entry of Submission.

This cause comes on to be heard on the petition in error and the transcript of the record of the district court of Brown County, and thereupon after oral argument by Silas Porter and S. L. Ryan for the plaintiffs in error, said cause is *submitted* on brief of counsel for both parties and taken under advisement by the court.

130 Be it further remembered, that afterwards on the 6th day of May, A. D. 1905, the same being one of the regular judicial days of the January, 1905, term of the supreme court of the state of Kansas, said court being in session at its court-room in the city of Topeka, the following proceeding, among others, was had and remains of record, to-wit:—

131 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrators of the Estate of Erasmus W. Allen, Deceased, Plaintiffs in Error,

vs.

FRANCES J. RILEY, Defendant in Error.

Journal Entry of Judgment.

This cause comes on for decision and thereupon it is ordered and adjudged that the judgment of the court below be *affirmed*. It is further ordered that the plaintiffs in error pay the costs of this case in this court taxed at $39.45, and hereof let execution issue.

132 And also on the said 6th day of May, A. D. 1905, there was filed in the office of the clerk of the supreme court of the state of Kansas, the syllabus and opinion of the said court in this cause, which syllabus and opinion are in words and figures as follows, to-wit:—

133 No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased,

v.

FRANCIS J. RILEY.

Error from Brown County. Affirmed.

Syllabus by the Court, Mason, J.

1. The act of 1889 (sections 4356-4358, Gen. Stat. 1901) requiring copies of letters patent and affidavits of their genuineness to be filed with the clerk of the district court is not invalid as an attempt to restrict the rights of holders of patents acquired under the federal statutes. Mason *v.* McLeod, 57 Kan. 105, followed.
2. Where the purchaser of a patent right sold without a compliance with such act brings an action to rescind the contract of sale and to recover the consideration paid, and in the petition offers to return all benefits received, and the defendant contests the rescission upon the ground that the statute is invalid, the plaintiff's right to the relief asked and to a judgment for costs is not affected by an omission to offer to restore the patent right before the commencement of the action.

All the Justices concurring.

A true copy. Attest:—

Clerk Supreme Court.

134 No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased,
v.
FRANCIS J. RILEY.

Error from Brown County. Affirmed.

The opinion of the court was delivered by MASON, *J.*:

Mrs. Frances J. Riley conveyed to E. L. Allen a tract of land in exchange for $100 and the assignment to her of the rights held by E. W. Allen under a patent covering a washing machine, so far as related to operations within the state of Kentucky. The transaction took place in Coffey county. No copy of the letters patent or affidavit of their genuineness had been filed with the clerk of the district court of that county, as required by the Kansas statute. (Sections 4356-4358, Gen. St. 1901). Upon this ground Mrs. Riley brought an action against the Allens to rescind the contract and to recover the value of the land, which had in the mean time passed into other hands, less the amount of money she had received. She recovered a judgment for $1250, from which error is now prosecuted.

Plaintiff in error claims that the act referred to is void upon the ground that it attempts to restrict the right granted to the holder of a patent under the federal statute. The act has already been upheld against this attack in Mason *v.* McLeod, 57 Kan. 105, where authorities are cited in support of the decision made, which is now reaffirmed. See also 22 A. & E. Encyc. of L. (2d ed.) 446; Union Nat. Bank *v.* Brown, (Ky.) 41 S. W. 273; State *v.* Cook (Tenn.) 64 S. W. 720.

A second objection to the judgment rendered is based upon the fact that the plaintiff did not, prior to beginning her action, offer to restore to the defendants the patent right which had been assigned to her, although an offer to do so was made in her
135 petition. It is argued that this omission was fatal to a recovery, or at all events should have prevented any judgment for costs against the defendants. Such a tender was not a prerequisite to the bringing of the action. There was nothing in the character or circumstances of the case to take it out of the general rule which is thus stated in Thayer *v.* Knote, 59 Kan. 181:

"Where equity requires the restoration of what has been received under a contract as a condition to its recission, it is sufficient to make the offer of restoration in the petition, and not necessarily before the bringing of suit."

See also 24 A. & E. Encyc. of L. (2d ed.) 621.

If the defendants upon being sued had consented to accept the return of the patent right and make restitution upon their own part they might well have claimed exemption from liability for costs, but in view of the fact that they contested the rescission of the con-

tract in the trial court and are still contesting it in this court, they are in no position to complain of the award made.

Other assignments of error are made and argued, but they are based upon assumptions of fact which are contradicted by the findings of the jury and need not be discussed.

The judgment is affirmed.

All the Justices concurring.

A true copy.
Attest:—

_____,
Clerk Supreme Court.

136 And afterwards on the 31st. day of May A. D. 1905, before the Honorable William A. Johnston, Chief Justice of the supreme court of the state of Kansas, at his chambers in the city of Topeka, the following proceeding was had and remains of record to-wit:—

137 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN ET AL., Adm'r, etc., Plaintiffs in Error,
vs.
FRANCES J. RILEY, Defendant in Error.

Journal Entry Recalling Mandate.

Now comes Silas Porter one of the attorneys for the plaintiffs in error and makes application for an order of this court recalling the mandate issued herein to the clerk of the district court of Brown county, for the reason that the plaintiffs in error desire to take an appeal from the judgment of this court to the United States Supreme Court. And thereupon after due consideration and for good cause shown, it is *ordered* that the mandate heretofore issued in the above entitled case to the clerk of the district court of Brown county, be recalled and remain in the custody of the clerk of the Supreme Court pending the final determination of the appeal of the plaintiffs in error in the United States Supreme Court.

138 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased, Plaintiff in Error,
vs.
FRANCIS J. RILEY, Defendant in Error.

I D. A. Valentine, clerk of the supreme court of the state of Kansas, do hereby certify that the above and foregoing is a full,

true, correct and complete transcript of all pleadings and papers filed and all proceedings had in the above entitled cause, as the same now remains on file and appears of record in my office.

Witness, my hand and the seal of the supreme court of the state of Kansas, hereto affixed at my office in Topeka, this 25" day of July A. D. 1905.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

139 Here follows the assignment of errors, petition for writ of error, a copy of the supersedeas bond and its approval, writ of error and its allowance, and the citation with the proof of service thereon:—

140 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased, Plaintiff in Error,
vs.
FRANCES J. RILEY, Defendant in Error.

Assignment of Errors.

Comes now the said E. L. Allen, and Wallace B. Allen, administrator of the estate of Erasmus W. Allen, deceased, plaintiffs in error, and submit in support of their petition for writ of error, their certain assignment of errors which they aver appear in the record of said cause in this court.

1. The Supreme Court of the State of Kansas erred in affirming the judgment of the District Court of Brown County.

2. The Supreme Court of the State of Kansas erred in failing and refusing to reverse the judgment of the said District Court.

3. The Supreme Court of the State of Kansas erred in holding and deciding that section 1 of chapter 182, Session Laws of Kansas, 1889, is valid, the validity of said section having been denied and drawn in question by the plaintiffs in error on the ground of being repugnant to the constitution of the United States and the laws of Congress and in contravention thereof.

4. The Supreme Court of the State of Kansas erred in holding and deciding that said section 1, of chapter 182, Session Laws of Kansas, 1889, does not abridge the privileges and immunities of citizens and of these plaintiffs in error as guaranteed by the 14th amendment to the Constitution of the United States.

141 5. The Supreme Court of the State of Kansas erred in holding and deciding that said section 1 of chapter 182, Session Laws of Kansas, 1889, does not place restrictions upon the

right of the owner and patentee of a patent right issued under the laws of Congress to sell and assign the same, beyond the restrictions established by section 4883, 4884 and 4898, Revised Statutes of the United States and is not in derogation of article 1, section 8 of the constitution of the United States.

LOOMIS, BLAIR & SCANDRETT,
Attorneys for Plaintiff in Error.

142 [Endorsed:] No. 13922. In the Supreme Court of Kansas. E. L. Allen *et al.* Plaintiff-, *vs.* Frances J. Riley, Defendant. Assignment of Errors. Loomis, Blair & Scandrett, Attorneys for plaintiffs, Topeka, Kansas.

143 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased, Plaintiffs in Error,
vs.
FRANCES J. RILEY, Defendant in Error.

Petition for Writ of Error.

Comes now the said E. L. Allen, and Wallace B. Allen, Administrator of the Estate of Erasmus W. Allen, deceased, plaintiffs in error herein and shows that on the 6th day of May, 1905 this court entered judgment herein in favor of the defendant in error and against the plaintiff- in error in which judgment and in the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of these plaintiffs in error and against a right, privilege and immunity claimed to exist by virtue of a clause of the Constitution of the United States and of certain acts of Congress, all of which will more fully appear by the assignment of errors which is filed with this petition in error.

Wherefore, These plaintiffs in error pray that a writ of error may be allowed to the Supreme Court of the United States for the correction of the errors complained of and that a transcript of the record, proceedings and papers in this cause, duly authenticated may be sent to the said Supreme Court of the United States.

LOOMIS, BLAIR & SCANDRETT,
Attorneys for Plaintiffs in Error.

144 [Endorsed:] No. 13922. In the Supreme Court of Kansas. E. L. Allen *et al.* Plaintiff-, *vs.* Frances J. Riley, Defendant. Petition for writ of Error. Filed Jul- 13 1905. D. A. Valentine, Clerk Supreme Court. Loomis, Blair & Scandrett, Attorneys for plaintiffs, Topeka, Kansas.

145 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased, Plaintiffs in Error,

vs.

FRANCES J. RILEY, Defendant in Error.

Order Allowing Writ of Error.

Now comes the said E. L. Allen, and Wallace B. Allen, Administrator of the estate of Erasmus W. Allen, deceased, plaintiffs in error in the above entitled cause by Loomis, Blair & Scandrett, their attorneys, and present to the Undersigned Chief Justice of the Supreme Court of the State of Kansas, their petition herein praying for the allowance of a writ of error in the above entitled cause to the Supreme Court of the United States for the correction of certain errors complained of and more fully set forth in the assignment of errors accompanying said application for a writ of error.

Upon consideration whereof it is hereby ordered that the said petition be and the same is hereby granted, and the said writ of error allowed.

And, at the same time, the plaintiffs in error present their bond in the sum of three thousand (3000) dollars, conditioned, that they will prosecute their said writ of error to effect and answer all costs and damages that may be adjudged if they shall fail to make good their plea, which bond is hereby approved.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

146 [Endorsed:] No. 13922. In the Supreme Court of Kansas. E. L. Allen *et al.* Plaintiff-, *vs.* Frances J. Riley, Defendant. Order allowing writ of error. Filed Jul- 13 1905. D. A. Valentine, Clerk Supreme Court. Loomis, Blair & Scandrett, Attorneys for plaintiff-, Topeka, Kansas.

147 UNITED STATES OF AMERICA, *ss:*

Supreme Court of the United States.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased, Plaintiffs in Error,

vs.

FRANCES J. RILEY, Defendant in Error.

Supersedeas Bond.

Know all men by these presents, that we, E. L. Allen and Wallace B. Allen, administrator of the estate of Erasmus W. Allen, deceased, as principals, and Wm. Knobb and Sample F. Newlon, as sureties

are held and firmly bound unto Frances J. Riley in the sum of Three Thousand Dollars, to be paid to the said Frances J. Riley, her executors or administrator. To which payment well and truly to be made we bind ourselves, jointly and severally, firmly by these presents.

Sealed with out seals, and dated this 28 day of June, 1905.

148 Whereas, the above named plaintiffs in error, E. L. Allen and Wallace B. Allen, administrator of the estate of Erasmus W. Allen, deceased, seek to prosecute a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Kansas;

Now, therefore, the condition of this obligation is such that if the above named plaintiffs in error, shall prosecute their said writ of error to effect and answer all costs and damages that may be adjudged if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

E. L. ALLEN
WALLACE B. ALLEN,
Administrator of Erasmus W. Allen.
WM. KNOBB.
SAMPLE F. NEWLON.

STATE OF KANSAS, *Brown County, ss:*

Wm. Knobb and Sample F. Newlon being each duly sworn on oath depose and say:

We are each of lawful age, and are citizens of the state of Kansas, and know the contents of the foregoing instrument to which we have attached our names. We each for himself say, we are worth the sum of Three thousand dollars over and above all debts, liabilities and exemptions.

WM. KNOBB.
SAMPLE F. NEWLON.

Subscribed and sworn to before me this 28 day of June, 1905.

J. A. JONAS,
Notary Public.

[NOTARY SEAL.]

My Commission expires Feb. 24, 1907.

The above bond is approved.

W. A. JOHNSTON,
Chief Justice of the State of Kansas.

Filed Jul- 13, 1905.
D. A. VALENTINE,
Clerk Supreme Court.

Endorsed: No. 13922.—In the Supreme Court of Kansas.—E. L. Allen *et al.*, Plaintiffs, *vs.* Frances J. Riley, Defendant.—Supersedeas Bond.—Loomis, Blair & Scandrett, Attorneys for Plaintiff-, Topeka, Kansas.

149 The original of the foregoing supersedeas bond was lodged with the clerk of the supreme court of the state of Kansas on July 13th, 1905, and the following indorsements made thereon: Bond:—Filed July 13, 1905. D. A. Valentine, Clerk Supreme Court.

150 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased, Plaintiffs in Error,

vs.

FRANCES J. RILEY, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Supreme Court of the State of Kansas, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Kansas before you at the May session of the January term, 1905, thereof, being the highest court of law or equity of the said state in which a decision could be had in the said suit between E. L. Allen and Wallace B. Allen, administrator of the estate of Erasmus W. Allen, deceased, plaintiffs and Frances J. Riley, defendant, wherein was drawn in question the validity of a statute of said state on the ground of its being repugnant to the constitution and laws of the United States, and the decision was in favor of such its validity, a manifest error hath happened to the great damage of the said plaintiffs as by their complaint appears.

We being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ so
151 that you may have the same at Washington, D. C., on or before thirty days from the date hereof to the end that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of July, 1905.

[The Seal of the Circuit Court of the United States District of Kansas, 1862.]

GEO. H. SHARITT,
Clerk of the Circuit Court of the United States, District of Kansas.

Allowed by:

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

14—99

152 Endorsed: No. 13922. In the Supreme Court of Kansas. E. L. Allen *et al.*, Plaintiff-, *vs.* Frances J. Riley, Defendant. Writ of Error. Filed Jul- 13, 1905. D. A. Valentine, Clerk Supreme Court. Loomis, Blair & Scandrett, Attorneys for Plaintiff-, Topeka, Kansas.

153 The original of the foregoing writ of error was lodged with the clerk of the supreme court of the state of Kansas, on July 13th, 1905, and also at the same time and place, a copy thereof for each one of the defendants namely:—Francis J. Riley. One of said copies being addressed personally to the said defendant in error. The following indorsement was made upon the said original writ and upon each copy:—Writ of error. Filed July 13th, 1905. D. A. Valentine, clerk of Supreme Court.

154 In the Supreme Court of the State of Kansas.

No. 13922.

E. L. ALLEN and WALLACE B. ALLEN, Administrator of the Estate of Erasmus W. Allen, Deceased, Plaintiffs in Error,

vs.

FRANCES J. RILEY, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Frances J. Riley, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error in the office of the clerk of the Supreme Court of the State of Kansas, wherein E. L. Allen, and Wallace B. Allen, administrator of the estate of Erasmus W. Allen, deceased, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

Attest:

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

155 I, W. F. Means, Attorney of record of the defendant in error in the above entitled cause, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of the United States.

W. F. MEANS,
Attorney for Frances J. Riley.

156 [Endorsed:] No. 13922 In the Supreme Court of Kansas E. L. Allen *et al.*, Plaintiff-, *vs.* Frances J. Riley, Defendant. Citation Filed Jul- 22 1905. D. A. Valentine Clerk Supreme Court. Loomis, Blair & Scandrett, Attorneys for Plaintiff-, Topeka, Kansas.

157 UNITED STATES OF AMERICA,
Supreme Court of Kansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said supreme court, in the city of Topeka, this 25th day of July A. D. 1905.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

Endorsed on cover: File No. 19,875. Kansas supreme court. Term No. 99. E. L. Allen and Wallace B. Allen, administrator of the estate of Erasmus W. Allen, deceased, plaintiffs in error, *vs.* Frances J. Riley. Filed August 14, 1905. File No. 19,875.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 5 1906
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1906.

E. L. ALLEN AND WALLACE B. ALLEN, ADMINISTRATOR OF THE ESTATE OF ERASMUS W. ALLEN, Deceased, *Plaintiffs in Error*,

vs.

FRANCES J. RILEY, *Defendant in Error.*

No. 99.

Brief for Plaintiffs in Error.

N. H. LOOMIS,
R. W. BLAIR, AND
H. A. SCANDRETT,
Attorneys for Plaintiffs in Error.

CRANE & CO., TOPEKA.

Supreme Court of the United States.

OCTOBER TERM, 1906.

E. L. ALLEN AND WALLACE B. ALLEN, ADMINISTRATOR OF THE ESTATE OF ERASMUS W. ALLEN, Deceased, *Plaintiffs in Error*,
vs.
FRANCES J. RILEY, *Defendant in Error*.
No. 99.

Brief for Plaintiffs in Error.

STATEMENT OF THE CASE.

On the 21st day of June, 1898, a patent was granted to Erasmus W. Allen for an improved washing-machine. January 30th, 1905, Frances J. Riley, a resident of Kansas, traded Allen, a resident of the same State, 80 acres of land in Coffey county, Kansas, in exchange for the rights under the patent for the State of Kentucky, and one hundred (100) dollars in money. At that time there was in force in Kansas, chapter 182, Laws of 1889 (§§ 4356, 4357, and 4358, General Statutes of Kansas, 1901), which reads as follows:

"SECTION 1. It shall be unlawful for any person to sell or barter or offer to sell or barter any patent-right, or any

right which such person shall allege to be a patent-right, in any county within this State, without first filing with the clerk of the district court of such county copies of the letters-patent duly authenticated, and at the same time swearing or affirming to an affidavit before such clerk that such letters-patent are genuine, and have not been revoked or annulled, and that he has full authority to sell or barter the right so patented; which affidavit shall also set forth his name, age, occupation and residence; and if an agent, the name, occupation and residence of his principal. A copy of this affidavit shall be filed in the office of said clerk, and said clerk shall give a copy of said affidavit to the applicant, who shall exhibit the same to any person on demand.

"SEC. 2. Any person who may take any obligation in writing for which any patent-right, or right claimed by him or her to be a patent-right, shall form a whole or any part of the consideration, shall, before it is signed by the maker or makers, insert in the body of said written obligation, above the signature of said maker or makers, in legible writing or print, the words, 'Given for a patent-right.'

"SEC. 3. Any person who shall sell or barter or offer to sell or barter within this State, or shall take any obligation or promise in writing for a patent-right, or for what he may call a patent-right, without complying with the requirements of this act, or shall refuse to exhibit the certificate when demanded, shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be fined in any sum not exceeding one thousand dollars, or be imprisoned in the jail of the proper county not more than six months, at the discretion of the court or jury trying the same, and shall be liable to the party injured, in a civil action, for any damages sustained."

Allen had not, prior to making the trade with Riley, filed copies of the letters-patent with the clerk of the district court, or otherwise complied with that statute.

About a year after making the deal, Riley brought suit in the District Court of Brown county, Kansas, to recover the value of the land given as consideration for the patent-right, alleging non-compliance with the law by Allen, and that by reason thereof the sale was void.

The defendants answered, alleging in substance that Erasmus W. Allen was the owner of the patent-right at the time the deal was made with plaintiff, and that he had the right under the constitution and laws of the United States to sell an interest in the patent covering the State of Kentucky to plaintiff without complying with chapter 182, Laws of Kansas, 1889, which was alleged to be in contravention of the Federal Constitution and statutes.

The trial court held chapter 182 valid, and judgment was rendered in favor of Riley for the value of the land, less one hundred (100) dollars, and that judgment was affirmed by the Kansas Supreme Court, 80 Pacific, 952; 71 Kansas, ——; and this proceeding is brought to reverse that judgment.

SPECIFICATION OF ERRORS.

1. The Supreme Court of the State of Kansas erred in affirming the judgment of the District Court of Brown county.

2. The Supreme Court of the State of Kansas erred in

failing and refusing to reverse the judgment of the said district court.

3. The Supreme Court of the State of Kansas erred in holding and deciding that section 1 of chapter 182, Session Laws of Kansas, 1889, is valid, the validity of said section having been denied and drawn in question by the plaintiffs in error on the ground of being repugnant to the Constitution of the United States and the laws of Congress, and in contravention thereof.

4. The Supreme Court of the State of Kansas erred in holding and deciding that said section 1 of chapter 182, Session Laws of Kansas, 1889, does not abridge the privileges and immunities of citizens and of these plaintiffs in error as guaranteed by the fourteenth amendment to the Constitution of the United States.

5. The Supreme Court of the State of Kansas erred in holding and deciding that section 1 of chapter 182, Session Laws of Kansas, 1889, does not place restrictions upon the right of the owner and patentee of a patent-right issued under the laws of Congress to sell and assign the same beyond the restrictions established by §§ 4883, 4884 and 4898, Revised Statutes of the United States, and is not in derogation of article 1, section 8 of the Constitution of the United States.

ARGUMENT.

The Constitution gives Congress the power "To promote "the progress of science and useful arts, by securing for "limited times to authors and inventors the exclusive "right to their respective writings and discoveries," and Congress has exercised that power by appropriate legislation regulating the issue of letters-patent and providing for their assignment.

Congress has enacted that—

"Every patent or any interest therein shall be assignable in law by an instrument in writing, and the patentee or his assigns or legal representatives may in like manner grant and convey an exclusive right under his patent to the whole or any specified part of the United States. An assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent Office within three months from the date thereof. If any such assignment, grant or conveyance of any patent shall be acknowledged before any notary public of the several States or Territories or the District of Columbia, or any Commissioner of the United States Circuit Court, or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section seventeen hundred and fifty of the Revised Statutes, the certificate of such acknowledgment, under the hand and official seal of such notary or other officer, shall be *prima*

facie evidence of the execution of such assignment, grant or conveyance."

3 U. S. Com. Stat. 1901, § 4898, as amended by act of Mar. 3, 1897.

It is plain that Congress has attempted to take exclusive charge of the issuing and assignment of patents.

It has prescribed the manner of making application, the proof required, the time for which granted, and finally, that every patent shall be assignable by an instrument in writing, which shall be recorded in the Patent Office within three months from its date.

That the assignment shall be in writing and be recorded in the Patent Office are the only restrictions prescribed by Congress, and are the only ones contemplated.

The question is squarely presented whether or not the State statute placing additional restrictions on the assignment of a patent is in conflict with the Constitution and laws of the United States. The Supreme Court of Kansas said it was not, (80 Pac. 952; 71 Kans. ——,) following an earlier decision, where it was said:

"The provisions of chapter 182, Laws of 1889, requiring the vendor of patent-rights to file with the clerk of the district court copies of the letters-patent and to make and file an affidavit that the letters-patent are genuine and unrevoked, and that he has authority to sell, and providing further that the words, 'Given for a patent-right,' shall be inserted in any written obligation taken from a vendee of a patent-right, are reasonable police regulations which do not violate the Federal Constitution, nor infringe upon the

exclusive right secured to the patentee by the Federal law."

Mason v. McLeod, 57 Kans. 105 (45 Pac. 76).

The decisions of the lower courts are not harmonious, and we will now call attention to a large number holding a view contrary to that of the Kansas court.

The Supreme Court of Illinois said:

"A State statute required vendors of patent-rights to procure a certificate from the county clerk, and provided that every written obligation, the consideration of which was a patent-right, should contain the words, 'Given for a patent-right,' and that such obligations should be subject to all defenses as if owned by the promisee. *Held*, unconstitutional and void as an attempt to regulate and control by State legislation a matter of which Congress has sole jurisdiction." (Syllabus.)

Hollida v. Hunt, 70 Ill. 109 (22 Am. Rep. 63).

In the opinion the court said:

"If this legislation can be sustained, upon the same principle nothing can be found to prevent the State from entirely prohibiting the sale of patent-rights; and if this may be done here, it may also be done in every other State in the Union, and thus we would have the spectacle of a right granted under the laws of the United States, pursuant to an express provision of the Constitution, annihilated by the laws of the several States."

The Supreme Court of Michigan said:

"A statute requiring notes given for transfers of patent-rights to state the particular consideration, is a violation of the Federal Constitution, as conflicting with the exclusive power of Congress to regulate patents, and as imposing

conditions on the transfer of that kind of property which do not apply to other kinds." (Syllabus.)

Cranson v. Smith, 37 Mich. 309 (26 Am. Rep. 514).

In the opinion the court said:

"The subject of granting patents and regulating the rights of patentees has been placed by the Constitution of the United States, in the control of Congress. It is for that body alone to determine to whom and on what conditions they shall be granted, and how the patented privileges are to be transferred or disposed of. Where any right or privilege is subject to the regulations of Congress, it is not competent for State laws to impose conditions which shall interfere with the rights or diminish their value."

The Supreme Court of Minnesota decided a similar case the same way.

Crittenden v. White, 23 Minn. 24 (23 Am. Rep. 676).

In *Ex parte Robinson*, 2 Biss. 309, construing a statute of Indiana, the court said:

"It is clear that this kind of legislation is unauthorized. To Congress is given, by the Constitution, the power to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. This power has been exercised by Congress, which has directed the manner in which patents shall be obtained, and, when obtained, how they shall be assigned and sold. The property in inventions exists by virtue of the laws of Congress, and no State has a right to interfere with its enjoyment, or to annex conditions to the grant. If the patentee complies with the law of Congress on the subject, he has a right to go into the open market, anywhere within

the United States, and sell his property. If this were not so, it is easy to see that a State could impose terms which would result in a prohibition of the sale of this species of property within its borders, and in this way nullify the laws of Congress which regulate its transfer, and destroy the powers conferred upon Congress by the Constitution. The law in question attempts to punish, by fine and imprisonment, a patentee, for doing with his property what the national legislature has authorized him to do, and is, therefore, void."

The Supreme Court of Indiana in passing on the same statute said:

"A State statute provided that any person taking a written obligation, the consideration whereof is a patent-right, shall, before such obligation is signed by the maker, insert in the body thereof, 'Given for a patent-right.' *Held*, unconstitutional, as interfering with the exclusive power of Congress to regulate patents."

Helm v. Nat'l Bank, 43 Ind. 167 (13 Am. Rep. 395).

That case has been overruled by later decisions of the Indiana Supreme Court, because it understood that *Ex parte Robinson* had been overruled by this court in *Patterson v. Kentucky*, 97 U. S. 501.

Brechbill v. Randall, 102 Ind. 528 (1 N. E. 362).
Hankey v. Downey, 116 Ind. 118 (18 N. E. 271).

The Supreme Court of Nebraska decided:

"The act of February 18, 1875, entitled 'An act to regulate the sale of patent-rights in the State of Nebraska, and prevent frauds connected therewith,' is in conflict with the Constitution and laws of the United States, and void."

Wilch v. Phelps, 14 Neb. 134 (15 N. W. 361).

That action was brought to foreclose a mortgage executed to secure the payment of a promissory note given for a patent-right. In the answer it was set up "that prior "to the time of said transaction and the execution of said "note the plaintiff had not in any particular complied "with the requirements of section 2, page 66, Compiled "Statutes, page 3711." That section provided particularly what steps should be taken by a vendor of a patent-right in order to make a valid sale. It required that every person desiring or intending to sell any patent-right, before offering to sell the same in any county in the State, should submit the letters-patent and proof of his authority to sell, to the county judge, and make certain other showing by affidavit; whereupon the judge, if satisfied, should make record of the proof, and thereafter the inventor would have the right to transfer his patent. Other sections of the act provided a penalty for making sale without compliance with the act, and also required that the words, "Given for a patent-right," should be inserted in any obligation taken in payment.

The demurrer to the answer was sustained on the ground that the Nebraska statute was in conflict with the Constitution and laws of the United States.

The Kentucky Court of Appeals, in passing on a statute requiring a license fee from vendors of patent-rights, said:

"This indictment is under the statute which imposes a penalty on all itinerant persons who vend patent-rights,

or territory for the sale, use or manufacture of patent-rights, without procuring and paying for a license authorizing such sale. . . . The sole question is as to the validity of the statute which requires a patentee or his vendee or assignee to first procure and pay for a license before he is authorized to vend his patent-right or territory for the sale, use or manufacture of his patent-rights. This statute in effect declares unlawful the sale of any patent-right, or the sale of any part of the territory which is covered by such patent-right, to anyone, unless the vendor first procure from the officials, as provided in the statute, a license authorizing the sale. . . . The power thus given to Congress has been exercised by it since the organization of the government. Statutes have been enacted relating to the subject, and the provisions thereof fully prescribe the circumstances and the manner of the issual of patents, how they may be transferred, and the character and extent of the rights which they confer on the patentee or his vendee or assignee. The moment the patent is granted the rights of the patentee are complete; even his property rights cannot be destroyed or impaired by Congress subsequently repealing the law which authorized the granting of it. . . . National authority only can grant patents, and regulate the sale of the right of the inventor in his discovery, and the manner of the disposition of such rights. While the States have jurisdiction to legislate on the matter of the use or sale of the article, which is brought into existence by virtue of the application of the patented process, it is an invasion of national authority for the legislature of the State to make a law which requires the patentee or his vendee to first procure and pay for a license to sell his right in his discovery,—his intangible right,—or the territory in which such right is granted. In so far as the statute attempts this, it is in conflict with the law of Congress. If the legislature has authority to

require the patentee or his assignees to procure and pay for this privilege, then there is no limit to the extent of such requirements. The legislature could fix the license fee so high that the patentee could not afford to pay it, as it might exceed the commercial value of his right. By this means the legislature of the State could utterly destroy the power which is in Congress, by the Federal Constitution, 'to promote the progress of science and useful arts.' The right to protect the inventor is necessarily with the authority which constitutionally and lawfully granted such rights. It was said by Marshall, Ch. J., in *McCulloch v. Maryland*, 4 Wheat. 426: '(1) That a power to create implies a power to preserve; (2) that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, these powers to create and preserve; (3) that where this repugnancy exists, that authority which is supreme must control, not yield to, that over which it is supreme.'"

Commonwealth v. Petty, 29 S. W. 291.

Judge SWAYNE, at circuit, held void an Ohio statute which provided that:

"Any note the consideration of which shall consist in whole or in part of the right to make, use or vend, any patent invention or inventions claimed to be patented, shall have the words, 'Given for a patent-right,' prominently and legibly written or printed on the face of such note above the signature, and such note or instrument in the hands of any purchaser or holder shall be subject to the same defenses as in the hands of the original owner or holder."

Woolen v. Banker, 2 Flipp. 33 (22 Am. Rep. 69).

Judge WOODS followed the decision in *Ex parte Robinson* in passing on the Indiana statute, saying:

"A State statute providing that any person who may take any obligation in writing for which any patent-right, or right claimed to be a patent-right, shall form the whole or any part of the consideration, shall, before it is signed by the maker, insert in the body thereof, above his signature, the words, 'Given for a patent-right,' is unconstitutional."

After citing *Ex parte Robinson, Helm v. Nat'l Bank*, and other cases, he added:

"It is claimed that these cases are inconsistent with the opinion of the Supreme Court of the United States in *Patterson v. Kentucky*, 97 U. S. 501. But that case has reference to local restrictions upon the sale or use of tangible property; and notwithstanding the property was manufactured or produced under letters-patent, it was held that the enforcement of the statute of the State interfered with no right conferred by the letters-patent. The case manifestly has no application here; the notes in suit having been given, not for tangible property, but for a right in letters-patent, in respect to which the States can impose no restrictions."

Castle v. Hutchinson, 25 Fed. 394.

Judge DALLAS held:

"The monopoly granted by a patent is a property right created under the Constitution and laws of the United States, and by those laws made assignable, and therefore a State law which prescribes that negotiable instruments in the ordinary form shall not be given or accepted for an

assignment of the patent itself is unconstitutional, as obstructive of the exercise of a right vested by federal law."

Pegram v. Am. Alkali Co., 122 Fed. 1000.

The judgment in that case was affirmed, but without passing on the point we are now discussing.

Brown v. Pegram, 125 Fed. 577.

On the other hand, various courts are in line with the Kansas Supreme Court, but it will be found that they proceed on the theory that this court has so decided in *Patterson v. Kentucky, supra.*

For example, Judge BAKER in upholding an Indiana statute similar to the Kansas law, decided that *Ex parte Robinson* was overruled by *Patterson v. Kentucky.*

Reeves v. Corning, 51 Fed. 787.

In *Patterson v. Kentucky* this court said:

"Where, by the application of the invention or discovery for which letters-patent have been granted by the United States, tangible property comes into existence, its use is, to the same extent as that of any other species of property, subject, within the several States, to the control which they may respectively impose in the legitimate exercise of their powers over their purely domestic affairs, whether of internal commerce or of police."

Patterson sold an illuminating oil, manufactured under a patent, in violation of a Kentucky statute which prescribed a certain grade for oil. His oil could not pass inspection under that statute, but he claimed he had the

right under his patent, to sell his product in any part of the United States.

In passing on his contention this court said:

"The Kentucky statute being, then, an ordinary police regulation for the government of those engaged in the internal commerce of that State, the only remaining question is, whether, under the operation of the Federal Constitution and the laws of Congress, it is without effect in cases where the oil, although condemned by the State as unsafe for illuminating purposes, has been made and prepared for sale in accordance with a discovery for which letters-patent had been granted. We are of opinion that the right conferred upon the patentee and his assigns to use and vend the corporeal thing or article, brought into existence by the application of the patented discovery, must be exercised in subordination to the police regulations which the State established by the statute of 1874. It is not to be supposed that Congress intended to authorize or regulate the sale, within a State, of tangible personal property which that State declares to be unfit and unsafe for use, and by statute has prohibited from being sold or offered for sale within her limits."

Following that decision, this court said:

"Letters-patent granted by the United States do not exclude from the operation of the tax or license law of a State the tangible property in which the invention or discovery is embodied."

Webber v. Virginia, 103 U. S. 344.

In that case Webber, a sewing-machine agent, refused to take out a license required by a statute of Virginia, claiming that as the machine he was selling was covered

by a patent, he had the right to sell it anywhere in the United States. While holding that the tangible property —the machine—was governed by the local law the same as all other tangible property, this court said:

"It is only the right to the invention or discovery—the incorporeal right—which the State cannot interfere with."

We understand this court to have decided that a State in the exercise of its police powers may regulate the handling of a product manufactured under a patent, such as illuminating oil as in Patterson's case and sewing-machines in Webber's case, but that it has never decided that a State can in any way interfere with an inventor's exclusive right to his discoveries.

Several of the decisions referred to by us, in commenting on Patterson's and Webber's cases, show the plain distinction made by those cases between the tangible property manufactured under a patent and the incorporeal rights of the owner of the patent.

Commonwealth v. Petty, 29 S. W. 291.
Castle v. Hutchinson, 25 Fed. 394.
Pegram v. Am. Alkali Co., 122 Fed. 1005.
Wilch v. Phelps, 14 Neb. 134.

The Supreme Court of Kentucky, 11 Bush, 311 (21 Am. Rep. 220), when deciding Patterson's case, pointed out the difference between tangible property, the fruits of an invention, and the intangible property represented by the

invention itself. Judge PRYOR, delivering the opinion of the court, said:

"There is a manifest distinction between the right of property in the patent, which carries with it the power on the part of the patentee to assign it, and the right to sell the property resulting from the invention or patent. A State has no power to say through its legislature that the patentee shall not sell his patent, or that its use shall be common to all of its citizens; for this would be in direct conflict with the law of Congress; and that portion of the opinion referred to, giving the patentee an unrestricted power to sell, has allusion alone to his right of property in the patent-right, as that was the only question involved in the case. The discovery or invention is made property by reason of the patent, and this right of property the patentee can dispose of under the law of Congress and no State legislation can deprive him of the right; but when the fruits of the invention or the article made by reason of the application of the principle discovered is attempted to be sold or used within the jurisdiction of a State, it is subject to its law, like other property; and such has been the uniform decision of all the courts, State and Federal, upon this question."

The Kansas statute is intended to give notice to all interested that a patent has been granted, and it is supposed to prevent fraud being perpetrated, but Congress had long ago considered those matters and had provided that a record shall be kept in the Patent Office showing all patents granted, and which ones have been assigned.

An intending purchaser of a patent-right can learn by inquiry at the Patent Office whether a patent has been is-

sued and whether the offering vendor is the owner. It may not be as convenient to do that as it would be to go to the district clerk's office, but Congress considered as sufficient the method it provided, and its decision must control.

To show the far-reaching effects of such legislation by the States, it is only necessary to recall that there are more than 100 counties in Kansas, and to consider that it will probably cost five dollars in each county to comply with the statute, then assume that each state has a similar law and it can readily be seen that the fees that might be exacted would, as was said in *Commonwealth v. Petty, supra*, exceed the commercial value of the right.

The Kansas Supreme Court upholds the statute on the ground that it is a police regulation, but overlooks the vice of including in one class all patent-right owners, good and bad, and imposing upon a certain kind of property created by an act of Congress, burdens not borne by any other property in the State.

Instead of imposing a penalty in the way of recording fees on every person holding a patent from the United States Government, the State should, if it is willing to keep within its police powers, impose a penalty on any person who obtains money from its citizens, under the false pretense of owning and having the right to sell a patent-right. Such a law would answer all the purposes of the present

act, and would not affect the honest vendor of a patent-right.

The act we are considering is no more a proper police regulation than was the act of Virginia, requiring all flour imported from other States to be inspected, which was held void by this court. (*Voight v. Wright*, 141 U. S. 62.)

The Virginia act was in violation of the commerce clause of the Constitution, because it was aimed directly and solely at all imported flour.

The Kansas act is in violation of section 8, article 1, of the Constitution, because aimed directly and solely at property rights in a patent granted by the Government and which are protected and regulated by the Federal Constitution.

We claim by our fourth assignment that the Kansas statute also violates the equal protection clause of the fourteenth amendment, because it singles out a class of property brought into existence by an act of Congress under a constitutional grant and imposes a burden simply on account of its character.

This court has said:

"The rule of law is well settled that an invention so secured is property in the holder of the patent, and that as such the right of the holder is as much entitled to protection as any other property during the term for which the franchise or the exclusive right or privilege is granted."

Cammeyer v. Newton, 94 U. S. 226.

That being so, the owner of that class of property should have the right to take his property to Kansas and sell it free from restrictions that are not imposed upon other property.

The State of Virginia was not allowed, under the guise of a police regulation, to require a different inspection of flour imported into its borders from that required of the home product, and while it was prevented from doing that by the commerce clause of the Constitution, the other clauses to which we have referred are just as sacred, and prevent the States from singling out property that is under the protection of those clauses and imposing burdens that are not borne equally by other property within their borders.

We respectfully urge that the judgment of the Kansas Supreme Court is wrong, and ask that it be reversed.

Respectfully submitted.

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Clerk.

Supreme Court of the United States

October Term 1906

E. L. ALLEN AND WALLACE B. ALLEN, ADMINISTRATOR OF THE ESTATE OF ERASMUS W. ALLEN, Deceased, Plaintiffs in Error,

vs.

FRANCES J. RILEY, Defendant in Error.

No. 99

Brief of Defendant in Error.

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and
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SMITH PRINTING CO., HIAWATHA, KS.

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Brief of Defendant in Error.

STATEMENT.

On January 31, 1901, Frances J. Riley conveyed to E. L. Allen a tract of land in Coffey County, Kansas, in exchange for the assignment to her of the right and interest of Eramus W. Allen, in and to the State of Kentucky for improvements in a washing machine under certain letters patent issued to Eramus W. Allen and the payment of one hundred dollars ($100.00.)

Francis J. Riley was a resident of Coffey County,

Kansas, and the plaintiffs in error were residents of Brown County, Kansas, and the transaction took place in Coffey County.

Section 1, Chapter 189, Laws of Kansas, 1889. sec. 4356, General Statutes 1901, reads as follows:

"It shall be unlawful for any person to sell or barter or offer to sell or barter any patent right, or any right which such person shall allege to be a patent right, in any county within this state without first filing with clerk of the district court of such county, copies of the letters patent duly authenticated, and at the same time swearing or affirming to an affidavit before such clerk that such letters patent are genuine, and have not been revoked or annulled, and that he has full authority to sell or barter the right so patented; which affidavit shall also set forth his name, age, occupation and residence, and if an agent, the name, occupation, and residence of his principal. A copy of this affidavit shall be filed in the office of said clerk, and said clerk shall give a copy of said affidavit to the applicant, who shall exhibit thé same to any person on demand."

Section three of said act provides a penalty for failing to comply with Section one.

The plaintiffs in error failed to comply in any

manner with this statute and Mrs. Riley brought her action in the district court of Brown County, Kansas,to recover the value of the land less the one hundred dollars, ($100.00), paid to her and recovered judgement in the sum of twelve hundred and fifty dollars, ($1250.00), from which error was prosecuted in the Supreme Court of the state where the judgement was affirmed.

They now challenge in this Court the validity of the Statute quoted, by the third, fourth, and fifth assignments of error. It is difficult to separate the argument on the third and fifth assignments. In fact the whole question might be stated to be, "Is the statute in question a valid exercise of police power by the State of Kansas?"

ARGUMENT.

The validity of this statute was first attacked and sustained in the Supreme Court of Kansas in the case of Mason vs McLeod, 57 Kansas, 105; and since that time in Pinney vs The First National Bank of Concordia, 68 Kansas 223; and in the case at bar.

In Mason vs McLeod in an opinion written by

Mr. Justice Johnson, (now Chief Justice) the Court said:

"In our opinion, these provisions do not trench upon federal power, nor interfere with the right secured to a patentee by the federal law. It is true that no state can interfere with the right of the patentee to sell and assign his patent, or take away any essential feature of his exclusive right. The provisions in question, however, have no such purpose or effect. They are in the nature of police regulations, designed for the protection of the people against imposition and fraud. There is great opportunity for imposition and fraud in the transfer of intangible property, such as exists in a patent-right, and many states have prescribed regulations for the transfer of such property, differing essentially from those which control the transfer of other property. There were some early decisions holding that such regulations trenched upon the federal power and the rights of the patentee, but recent authorities hold that reasonable police regulations may be enacted by the state without usurping any of the powers of the federal government or infringing upon the exclusive rights of the patentee.

Brechbill vs Randall et al, 102 Ind. 528.
New vs Walker, 108 id, 356.
Pape vs Wright, 116 id., 502.

Sandage et al vs The Studebaker Bros. Mfg. Co., 142 id., 148.

Tod vs Wick Brothers & Co., 36 Ohio St., 370.
Herdic vs Roessler, 109 N. Y. 127.
Haskell vs Jones, 96 Pa. St. 173.
Patterson vs Kentucky, 97 U. S., 501.
Webber vs Virginia, 103 id., 344:

"The doctrine of these cases is that the patent laws do not prevent the state from enacting police regulations for the protection and security of its citizens, and that regulations like ours, which are mainly designed to protect the people from imposition by those who have actually no authority to sell patent-rights or have no patent-rights to sell should be upheld. We think the statute is valid."

The Court further said:

"The purpose of the statute, as we have seen was to prevent and punish fraud, and non-compliance with its provisions is declared to be a misdemeanor, punishable by fine or imprisonment. The penalty implies a probition, and contracts made by a vendor of patent-rights in violation of the act are void as between the parties. The transfer of Mason being illegal, did not constitute a valid consideration for the money or property obtained from McLeod. New vs Walker, Supra; Sandage et al vs The Stu-

debaker Brothers Manufacturing Company, Supra; Judge Cooley says:

"The police power of a state, in a comprehensive sense embraces the whole system of internal regulation by which the state seeks, not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizens those rules of good manners and good neighborhood which are caculated to prevent conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as it is reasonably consistant with a like enjoyment of rights by others."

"Cooley, Const. Lim. 572."

The same writer also said:

"The power to establish the ordinary regulations of police has been with the individual states, and cannot be assumed by the National Goverment."

"Cooley, Const. Lim. 574."

Mr. Justice Harlan, in Patterson vs Kentucky, 97, U.S. 501, says:

"By the settled doctrine of this court, the power extends, at least, to the protection of the lives, the health, and the property of the community against the injudicious exercise by any citizen of his own

rights."

In his treatise on Constitutional Law, Mr. Black says:

"Notwithstanding the exclusive power of Congress to grant patents for inventions, it still remains within the power of each state to make reasonable police regulations to protect the purchaser of patent rights in their sale, and also to regulate, or exclude from its internal commerce, articles which its legislature may deem dangerous, noxious or unfit for use, although covered by patents."

Black, Am. const. Law, Second Ed. Page 367.

This section of the Kansas Statute was adopted verbatim from the statutes of Indiana, and was construed and upheld in that State in Breckbill vs Randall, 102, Ind., 528; New vs Walker, 108 Ind., 365; Pape vs Right 116 Ind., 502; Sandage vs Studebaker Bros. Manufacturing Co., 142, Ind., 148; and in Reeves vs Corning, 51 Federal Rep. 774(beginning at bottom of page 782.)

The question presented and argued in the Reeves vs Corning, 51 Fed. Rep. 774(beginning at the bottom of page 782) are identical with the question presented by the assignments of error in this case,

except that they are discussed in the reverse order. In the course of its opinion the Court said:

"The protection of the citizens from fraud and imposition evidently falls within the limits of the police power. This power reaches all persons and things within the state, and it may be rightfully exercised by the state over them, unless the power is denied by constitutional limitation, or by an act of Congress or treaty made pursuant to the constitution. The right of the state to make reasonble police regulations to protect the purchaser of the incorporeal property created by the patent laws from fraud and imposition in its sale is not denied to the states in express terms, either by the federal constitution or by the laws enacted by Congress. This power originally and inherently belonged to the states, and it yet remains with them, unless impliedly taken away by a fair construction of the constitution, or the laws enacted in pursuance thereof."

In re Brosnahan, 18 Fed. Rep., 62; Mr. Justice Miller says:

"The sole object and purpose of the laws which constitute the patent and copyright system is to give to the author and to the inventor a monoply of what he has written or discovered, that no one else shall make, use or sell his writings or his invention

without his permission; * * * The purposes of the patent laws and constitutional provisions are answered when the patentee is protected against competition in the use of his invention by others, and when the law prevents others from infringing on his exclusive right to make, use, and sell the object to be accomplished."

In Patterson vs Kentucky supra., it is said:

"Whether the policy thus pursued by the state is wise or unwise, it is not the province of the National authorities to determine. That belongs to each state, under its own sense of duty, and in view of the provisions of its own constitution."

In Livingston vs Van Ingan, 9 Johns. 528, Chancellor Kent said:

"The power granted to congress goes no further than to secure to the author or inventor a right of property, which, like every other species of property, must be used and enjoyed within each state according to the laws of such state. The power of Congress is only to ascertain and define the right of property; it does not extend to regulating the use of it."

The statute in controversy in no way conflicts with the right secured to the patentee to sell, as-

sign, or otherwise dispose of the patented article or of his right to sell or assign the patent right itself. If there is any difference as to the necessity of the exercise of police power by the states, the difference lies on the side of the regulation of the sale of the patent right. There is greater danger of fraud and imposition in the sale of an incorporeal right or thing, than in the sale of the tangible article.

Unless it be by reason a state law similar to the one in controversy, there is nothing to require the vendor of a patent right to furnish the vendee with any evidence of his right to sell. The opportunity to commit fraud is alluring, and we think it may be stated as a matter of common knowledge, that fraud and imposition are frequently perpetrated in the sale of patent-rights. The legislatures of many states have taken note thereof and enacted laws in relation thereto.

Section 4898, of the Revised Statutes of the U. S. only requires that assignments, grants and conveyances of the patent right shall be recorded in the Patent Office within three months from the date thereof, and during this period it is impossible for the purchaser to procure any information of a prev-

ious sale or assignment by the examination of any public record.

In Cammeyer vs Newton, 94 U. S. 225, the Court said:

"An invention secured by patent is property in the holder of the patent, and is as much entitled to protection as any other property."

It is fully settled in Patterson vs Kentucky, 97, U. S. 501, that the tangible product of an invention falls within the domain of the police power of the state. Upon such principle we see no reason why the intangible or the incorporeal property should not fall within the same rule. It being a specie of property, it is no more sacred so far as a reasonable regulation is concerned than the patented article. There is no discrimination under the statute of Kansas, for it simply provides a method by which the citizens of the state may secure protection against fraud and imposition. The requirements of the law in no way interferes with nor hinders the inventor in the exclusive use of his right.

The filing of the copy of letters patent, with the affidavit of the person who assumes to have the right to sell as required by the section in question is

not an unreasonable regulation. It is only required to be done in the county where the transaction takes place, without regard to location or extent of the territory sold or assigned. There was no complaint that the charge or cost of complying with the statute was excessive and it cannot be presumed that such charge was unreasonable.

It is claimed by the plaintiffs in error in their fourth assignment of error, that this statute abridges the privileges and immunities of citizens guaranteed by the fourteenth amendment to the Constitution. It has already been held by this court and we presume that it may be taken as settled, that the fourteenth amendment does not interfere with the proper exercise of police power by the states.

Mugler vs Kansas, 123 U. S. 623.
Powell vs Pennsylvania, 127 U. S. 678.
Yick Wo vs Hopkins, 118 U. S. 356.

If the statute is a reasonable exercise of police power, it necessarily follows that it does not violate the protective clause of the amendment.

The plaintiffs in error have cited the case of Voight vs Wright, 141 U. S. 62, with the argument that the principle upon which the case was de-

cided is analogous to the contention which they make herein. We do not see the application. The rule there laid down was that:

"A State cannot under the guise of enacting inspection laws, make discriminations against the products and industries of other states, in favor of its products and industries."

There is no discrimination in the Kansas statute in controversy. It was enacted in the utmost good faith. It applies alike to all persons who seek to sell patent rights in the state. It deprives the inventor of no right. It imposes no unreasonable requirement, and is but a just exercise of the power with which the states are vested, by which they are enabled to protect their people from fraud and oppression.

While it is true that some earlier cases appear to sustain the contention of plaintiffs in error, we think that the true rule, sustained by later authorities, is in accord with the decisions of the Supreme Court of Kansas.

We therefore respectfully urge that the judgement be affirmed.

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